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No. 90- ___

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

GREENVILLE PUBLIC SCHOOL DISTRICT, *et al.*,
Petitioners,

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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June 3, 1991

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QUESTIONS PRESENTED

1. Whether the Attorney General can be deemed to have precleared under § 5 of the Voting Rights Act a voting change effected by the repeal of a statute when the voting change was neither (a) specifically identified or explained in the State's submission of other related voting changes nor (b) actually evaluated or considered by the Attorney General?

2. Whether the express preclearance by the Attorney General of a voting change results in the preclearance by implication of another voting change because under state rules of statutory construction the two statutes containing the voting changes are "clearly inconsistent"?

PARTIES TO THE PROCEEDING BELOW

In addition to the two school districts, the school board members from each district were named in their official capacities as parties to the proceedings below.

Greenville Public School District:

Mary Haynes
Carolyn Morris
Ann Brent
Roy Campbell, III
John Richards

Western Line Consolidated School District:

Ruby Slade
Dot Gilder
Tootie Trotter
Clarence Hall, Jr.
Martha Carroll

During the course of these proceedings, Ann Brent and Roy Campbell, III, were replaced on the board of the Greenville Public School District by Robert Jones and Jerome C. Hafter.

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OPINIONS BELOW

The opinion of the Mississippi Supreme Court is reported at 575 So. 2d 956 (Miss. 1990). It is reprinted in the Appendix at 1a-21a.

The decision of the Circuit Court of Washington County was not reported. It is reprinted in the Appendix at 24a-26a.

JURISDICTION

The opinion of the Mississippi Supreme Court was issued on December 12, 1990. A timely petition for rehearing was denied on March 6, 1991. The jurisdiction of the Court is invoked under 28 U.S.C. § 1257.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

42 U.S.C. § 1973c

This statute is reprinted in App. O, 179a-180a.

28 C.F.R. § 51.25 (1986)

This regulation is reprinted in App. P, 181a-182a.

28 C.F.R. § 51.35 (1986)

This regulation is reprinted in App. Q, 183a.

Miss. Code Ann. § 37-7-611 (1972)

This statute is reprinted in App. G, 109a-111a.

Miss. Code Ann. § 37-7-103 (1972 & Supp. 1990)

The two versions of this statute are set forth in App. F, 76a-77a.

Miss. Code Ann. § 37-7-113 (1972 & Supp. 1990)

The two versions of this statute are set forth in App. F, 87a-88a.

HOW THE FEDERAL QUESTION WAS PRESENTED

In the state courts, the Petitioners sought a determination that Miss. Code Ann. § 37-7-611 (1972) governed the location of the boundaries of the Greenville and Western Line school districts after the City of Greenville annexed portions of both school districts. Section 37-7-611 required the automatic extension of a municipal school district's boundaries when its parent municipality annexed territory in an adjoining school district. In 1986, as part of a massive revision of Mississippi's education law, the egislature repealed § 37-7-611 by enacting the Uniform School Law.

The Respondents, the Defendants below, argued that Miss. Code Ann. § 37-7-103 (Supp. 1990), which had been amended by the Uniform School Law, governed the school districts' boundaries after the annexation. As amended, § 37-7-103 permits school district boundaries to be altered only by agreement of the districts involved. In deciding the question whether § 37-7-611 or § 37-7-103 controlled

the post-annexation boundaries of the two school districts, the state courts exercised the authority granted by *Hathorn v. Lovorn*, 457 U.S. 255 (1982), to decide collateral issues implicating the Voting Rights Act.

Specifically, the federal question arose because of the disputed preclearance status of the repealer of § 37-7-611. The State had submitted the Uniform School Law to the Attorney General for preclearance but did not specifically identify or explain the voting change effected by the repeal of § 37-7-611. The amendment to § 37-7-103 was properly submitted and precleared. The State later submitted the repeal of § 37-7-611 for preclearance, and the Attorney General interposed an objection.

If the repealer of § 37-7-611 were ineffective because it had not been precleared, the boundaries of the Greenville city school district would automatically expand to encompass the new boundaries of the City of Greenville. If the repeal of § 37-7-611 had been precleared, however, the amended (and precleared) version of § 37-7-103 would govern, and the boundaries of the Greenville and Western Line school districts could be altered only by agreement. The state courts were required to review Mississippi's § 5 submissions of the repealer of § 37-7-611 and the Uniform School Law.

STATEMENT OF THE CASE

In January 1988, the Petitioners, the Greenville Public School District and its five board members, filed this action in the Circuit Court of Washington County, Mississippi, against the Respondents, the Western Line Consolidated School District and its five board members.[1] The Petitioners

[1] The Greenville city school district is organized under Mississippi law as a municipal school district with added territory. The boundaries of the district consist of the entire City of Greenville plus territory contiguous to the city. *See* Miss. Code Ann. § 27-33-11(c) (Supp. 1990); *id.* § 37-6-3(2)(b). The board members of the city school district are appointed by the city council, who are in turn elected by the residents of the city. *Id.* § 37-7-203 (1990). Mississippi law allows residents of

sought a declaratory judgment concerning the applicability of Miss. Code Ann. §§ 37-7-611 and 37-7-103 to a dispute regarding the boundaries of the two school districts as the result of an annexation by the City of Greenville. App. 29a-31a.[2]

At the conclusion of the annexation proceedings, the city's boundaries extended into a portion of the Western Line school district. The dispute between the two school districts centered on whether under Mississippi law the Greenville city school district's boundaries included the suburban property in the Western Line district annexed by the city.

From 1926 to 1986, Mississippi law provided that when the boundaries of a municipality were extended by annexation to include territory of an adjacent school district,

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the added territory of a municipal school district to elect either one or two board members depending on the percentage of students residing in the added territory. *Id.*

The Western Line School District is a consolidated school district, which is defined as a school district other than a municipal school district and county-wide school district and includes territory in more than one county. *In re 2,952 Registered Voters*, 574 So. 2d 619, 624 (Miss. 1990). The Western Line district is located in Washington County and neighboring Issaquena County, and its boundaries generally surround Greenville on the north, east and south. The Mississippi River serves as the city's western boundary. *See Mississippi v. Arkansas*, 415 U.S. 289 (1974) (map of area attached as exhibit to Court's decision). Western Line is essentially a suburban school district, and its board members are elected by the residents of the consolidated school district. Miss. Code Ann. § 37-7-207 (1990).

[2] After protracted litigation, the Mississippi Supreme Court approved the annexation in 1987. *See City of Greenville v. Farmers, Inc.*, 513 So. 2d 932 (Miss. 1987); *Western Line Consol. School Dist. v. City of Greenville*, 465 So. 2d 1057 (Miss. 1985); *see also Western Line Consol. School Dist. v. Greenville Mun. Separate School Dist.*, 433 So. 2d 954, 958 (Miss. 1983) (residents in portion of Western Line school district subject to annexation had no right to vote on whether to become part of city school district). The area annexed included virtually all of the added territory of the Greenville city school district and suburban property located in the Western Line school district. After initially objecting to the annexation, the Attorney General granted preclearance on February 11, 1990. App. 4a-5a.

the annexed portion of the adjacent school district automatically merged into the municipal school district. *See* Miss. Code Ann. § 37-7-611 (1972); Miss. Code § 6670 (1930).[3]

In 1986, the Mississippi Legislature enacted the Uniform School Law, which was designed to provide Mississippi with a common system of school administration. The Law affected virtually every aspect of a school district's operations, including student assignment and transportation, teacher certification requirements, school finances, authority of school superintendents, procedures relating to election referenda in the area of taxation and bonded indebtedness and alteration of school district boundaries. App. 35a.[4] Section 47 of the Uniform School Law repealed

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[3] Section 37-7-611 also contains provisions concerning the effect of an annexation that occurred after the school year had begun or that included or excluded school buildings of an adjoining district. In addition, this section permits the municipal school district and the county school district to agree to extend the municipal school district boundaries beyond the newly created municipal boundaries. The agreement requires approval by the State Educational Finance Commission.

In 1977, the legislature created an exception to § 37-7-611 by amending Miss. Code Ann. § 21-1-59 (Supp. 1990) to provide that the extension by annexation of a municipality's boundaries across a county line would not affect the school district in the annexed area unless that school district consented to be included in the municipal school district.

The 1977 amendment to § 21-1-59, however, was not submitted for preclearance until 1990, and the Attorney General interposed an objection on May 25, 1990. *See Dupree v. Mabus*, No. H90-0043(W), slip op. at 30 (S.D. Miss. Apr. 2, 1991) (three-judge court). Thus, the 1977 amendment to § 21-1-59 is unenforceable. *Id.* at 31.

The three-judge court in *Dupree* also addressed the effect of the repeal of § 37-7-611 on the boundaries of the Hattiesburg, Forrest County and Lamar County school districts because of annexations by the City of Hattiesburg into Forrest and Lamar Counties. The three-judge court in *Dupree* issued an opinion on April 2, 1991 and, like the Mississippi Supreme Court in the instant case, held that the repeal of § 37-7-611 had been precleared by the Attorney General.

A notice of appeal to this Court has been filed in *Dupree*. The appeal presents the issue addressed in Part I of this Petition.

[4] The court below mistakenly referred to the 1986 enactment as the

§ 37-7-611 and twenty-two other statutes that dealt with the creation and operation of municipal school districts. App. 75a.

The Uniform School Law also amended §§ 37-7-103 and 37-7-113. Prior to 1986, § 37-7-103 permitted a county board of education to abolish the boundaries of any school district in the county except a municipal school district. With the consent of the municipal school district, the county board of education could add to the municipal school district any part of the county adjoining the municipal school district or detach territory from the municipal school district and annex it into a district in the county school system.[5] Section 37-7-103 now provides that all school districts have the authority previously conferred on county boards of education. App. 76a-77a.

Before 1986, when a county board of education exercised its authority under § 37-7-103, § 37-7-113 required the changes to be submitted to the State Educational Finance Commission for approval. The amended version of § 37-7-113 requires all school boards to submit proposed boundary changes to the State Board of Education, which succeeded to the powers of the State Educational Finance Commission. App. 87a-88a.

Prior to 1986, the long standing policy in Mississippi required that the boundaries of a municipal school district be, at a minimum, coterminous with its parent city.[6] The residents of the city would, therefore, always be residents

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Education Reform Act, which was passed in 1982. App. 2a, 5a, 9a, 35a.

[5] Prior to 1986, the county board of education had authority over consolidated school districts and line consolidated school districts. *See* Miss. Code Ann. § 37-7-3 (1972) (repealed by Uniform School Law, ch. 492, § 51, 1986 Miss. Laws 710); Miss. Code Ann. § 37-7-801 (1972) (repealed by Uniform School Law, ch. 492, § 49, 1986 Miss. Laws 710).

[6] By having "added territory" the boundaries of some municipal school districts, like Greenville, included the entire city plus added territory contiguous to the city. *See supra* n.1.

of the city school district. The repeal of § 37-7-611 fundamentally altered this policy. After 1986, a city school district's boundaries would not automatically expand to include the area annexed by its parent city. As a result, residents of the area annexed by the city would not necessarily be residents of the city school district; they could remain residents of the county, or suburban, school district. These newly annexed residents would continue to elect directly the board members of their suburban school district, and they would indirectly select the board members of the city school district by voting for the city council.[7]

The Governor of Mississippi signed the Uniform School Law on April 15, 1986, and the State submitted it to the Attorney General for preclearance on July 22, 1986. App. 32a-46a. The submission consisted of a one-page cover letter, a thirteen-page document containing information ar-

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[7] In his March 31, 1989, objection to the repeal of § 37-7-611, the Attorney General noted "a demographic trend toward the movement of whites out of the cities into suburban and rural areas while blacks are moving from the rural areas of the state into the cities." This pattern appeared to "play a significant role in the opposition to annexations by school districts that neighbor a municipal district since we have noted specific recent annexation disputes where a principal issue has been opposition by predominantly white areas to transferring their students into a majority black school system." The "long term effect" of the repeal of § 37-7-611 "appears to be that, with the movement of whites out of the cities, the municipal school systems in Mississippi will essentially be frozen in their present boundaries with increasingly higher black population percentages and will be economically disadvantaged while neighboring school districts change in an opposite manner." App. 140a-141a.

This controversy has spawned litigation in state court, *see infra* n.20, and in federal court, *see Nickles v. Western Line Consol. School Dist.*, No. GC90-45-B-O (N.D. Miss. filed Feb. 22, 1990); *Prentiss County Annexation Comm. v. Mabus*, No. EC90-04-S-D (N.D. Miss. filed Jan. 5, 1990); *Dupree v. Mabus*, No. H90-0043(W) (S.D. Miss. Apr. 2, 1991). In the light of the Attorney General's concerns, the significance of the Mississippi Supreme Court's decision is obvious: it enforces the repeal of the policy requiring the automatic expansion of the boundaries of a city school district when its parent city annexes territory in a suburban school district.

ranged in accordance with the Department of Justice regulations governing § 5 submissions and three other documents:

(1) A typescript copy of the entire Uniform School Law, which consisted of 205 sections. The Law was 173 legal-sized pages in length and contained 5,569 lines of type. The language added to existing code sections was underlined, and language deleted from existing statutes was denoted by check marks;

(2) A copy of the tally sheets reflecting the votes of the state legislators; and

(3) A 467-page looseleaf booklet titled "Senate Bill 2117 - Comparison of Current Law and New Law," which contained the typed version of the bill interspersed with photocopied pages of the then-current statute amended by particular sections of the Uniform School Law. App. 47a-108a.[8]

In 1986, the regulations governing § 5 submissions to the Attorney General mandated that a copy of the enactment embodying the voting change be provided. 28 C.F.R. § 51.25(a) (1986). App. 181a. In addition, the regulations required that if the voting change was not "readily apparent on the face of the document provided under" § 51.25(a), the submission should contain "a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or ex-

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[8] The one-paragraph "Introductory Note" to the looseleaf booklet stated that the booklet provides "on a section by section basis each section of the current law which has been amended followed by each individual section of" the Uniform School Law. If a section of the Uniform School Law creates "new law then only those particular sections will be denoted with no comparison of current law." The Note further stated that "[t]his section by section comparison provides explanatory materials adequate to disclose the difference between the prior and the proposed law." The Note concluded as follows: "By comparing each section of [the Uniform School Law] and the current practice, the changes to current law are easily identified." App. 47a.

planatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting." *Id.* at § 51.25(b). App. 181a. The regulations did not require the submitting jurisdiction to provide a copy of the prior law being repealed or amended.[9]

The State characterized its submission as follows:

> This submission is cited as the "Mississippi Uniform School Law of 1986" and is submitted to the Attorney General of the United States in its entirety. . . . For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review. [App. 35a.]

The State then specifically identified thirteen of the 205 sections of the Uniform School Law.[10] In discussing the sections, the State contrasted the new law with the then-present law. Section 47, which repealed § 37-7-611, and § 57, which amended § 37-7-113, were not identified and were not referred to anywhere in the thirteen-page submission. Section 52, which amended § 37-7-103, was specifically identified and discussed. App. 37a. The discussion of § 52 consisted of a paraphrase of the then-current statute and the amended version. Sections 47 and 57 appear, without explanatory comment from the State, in the typescript copy of the Uniform School Law and in the loose-leaf booklet.[11]

The Attorney General received the submission on July 23, 1986, and responded on August 29, 1986. He did "not

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[9] That requirement is presently codified at 28 C.F.R. 51.27(b) (1990).

[10] The sections identified were 9, 25, 52-56, 153, 163, 164, 170, 185 and 203. These sections, along with §§ 47 and 57, are set forth in App. F, 47a-108a.

[11] Although the "Introductory Note" to the booklet indicated that a copy of the current law would be provided only if it was *amended* by the Uniform School Law, the State did provide copies of statutes repealed by §§ 189 and 195 of the Uniform School Law.

interpose any objection to the voting changes occasioned by [the Uniform School Law] *as identified in your July 22, 1986 letter.*" App. 112a (emphasis added). The voting change effected by the repeal of § 37-7-611, however, was not specifically identified or explained in the submission and was not precleared. The State acknowledged that the status of § 37-7-611 remained unclear after the Attorney General's response, App. 147a, and conceded before the Mississippi Supreme Court that its July 1986 submission contributed to the uncertainty surrounding the status of § 37-7-611.[12]

In recognition of the absence of the preclearance of § 47 of the Uniform School Law, the State submitted § 47 to the Attorney General for review on December 30, 1987. App. 114a-124a.[13] In its submission of § 47, the State acknowledged the entire Uniform School Law had not been precleared by virtue of the Attorney General's August 29, 1986 letter. In summarizing the purposes of the Uniform School Law, the State explained that the "*major part of* [the Uniform School Law], as it deals with the Voting Rights Act . . . has already been precleared . . . ." App. 117a (emphasis added). The State noted not only that the entire Uniform School Law had not been precleared but also that the repealer of § 37-7-611 affected voting:

> Any indirect changes in the electoral procedure or process repealed by Section 47 are contained

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[12] The uncertainty was due in part to the State's discussion in its submission of thirteen (13) sections of [the Uniform School Law], even though the State cautioned that these were being set out for brevity sake and that the [Law] was being submitted in its entirety. The Attorney General's August 29, 1986, letter seemed to preclear only the sections that were specifically discussed.

Amicus Curiae Brief of State of Mississippi, at p. 4.

[13] Section 47 was the third specific section of the Uniform School Law submitted for preclearance by the State after it received the Attorney General's August 29, 1986, response. On April 30, 1987, the State submitted §§ 60 and 84 for preclearance. The Attorney General did not interpose an objection to these two sections. App. 147a.

> as new legislation in the other sections of [the Uniform School Law], *most of which* have already been precleared by the United States Justice Department. Section 47 is simply a house cleaning measure for [the Uniform School Law]. [App. 119a-120a (emphasis added).]

Later in the submission, the State pointed out that a lawsuit had been filed challenging certain portions of the Uniform School Law, including the repealer of § 37-7-611. "However, since the filing of the suit *substantive parts* of [the Uniform School Law] have been precleared by the Justice Department on August 29, 1986." App. 120a (emphasis added).

On February 28, 1988 the Attorney General requested additional information concerning the repeal of § 37-7-611. App. 125a.[14] Almost a year later, on January 27, 1989, the State responded and again acknowledged that the Uniform School Law had not been precleared in its entirety. The State began its response by summarizing the submission history of the Uniform School Law.

> On July 22, 1986, the State of Mississippi submitted [the Uniform School Law] for preclearance under Section 5 of the Voting Rights Act. . . . On August 29, 1986, [the Uniform School Law] was precleared under Section 5 *as to the particular sections identified in our July 22, 1986 submission.*
>
> On December 30, 1987, the State of Mississippi submitted [the repealer of § 37-7-611] since [it]

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[14] On May 5, 1988, shortly after the Attorney General requested additional information, the trial court issued its final judgment. App. 24a-26a. As a result, the significant factual developments occurring after this date were brought to the attention of the state supreme court by supplementing the record on appeal. Despite being made aware of the submission of the repeal of § 37-7-611, App. 29a, the trial court effectively held that the repealer would be enforceable pending a "definitive" ruling by the Attorney General or the state supreme court. App. 25a.

> was *not specifically identified* in our original submission. [App. 130a (emphasis added).]

After receiving the State's additional information on January 30, 1989, the Attorney General interposed an objection to the repeal of § 37-7-611 on March 31, 1989.[15]

On January 12, 1990, the State formally sought reconsideration of the Attorney General's limited preclearance of the Uniform School Law or, alternatively, the objection interposed to the repeal of § 37-7-611. App. 143a-172a. In the reconsideration request, the State for the first time argued that the entire Uniform School Law had been submitted and precleared in 1986. App.148a-149a. On May 25, 1990, the Attorney General rejected the State's position.

> At the outset, we note that the state makes several claims about the preclearance status of the instant changes which appear to seriously misconstrue the structure, purpose, and history of the preclearance requirement. . . .
>
> Section 5, as interpreted by the courts and our submission guidelines, plainly fixes the responsibility for identifying voting changes on the state, not the United States Attorney General, yet the state appears to be arguing in both instances that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made. [App. 174a-175a.]

Against this backdrop, the Mississippi Supreme Court affirmed in part and reversed in part the trial court's de-

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[15] The Attorney General concluded the repeal of § 37-7-611 would likely "create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote for the city governing body which, under Mississippi law, appoints the city school board." The State did not provide a rationale for the creation "of such a political system which appears not only to have the potential to impact negatively on the influence of minority city school district residents but also to treat black voters differently than white voters." App. 141a.

cision to grant Western Line's motion for summary judgment and deny the relief sought by the Greenville school district.[16]

After reviewing the submission history of the Uniform School Law, the state supreme court noted its authority to "decide questions pertaining to preclearance under § 5 of the Voting Rights Act." App. 6a (citing *Hathorn v. Lovorn*, 457 U.S. 255 (1982)). More specifically, it could "review the circumstances under which the objection letter was issued in order to determine whether it was validly and timely issued." App. 6a-7a (citing *Garcia v. Uvalde County*, 455 F. Supp. 101, 102 (W.D. Tex. 1978) (three-judge court), *summarily aff'd*, 439 U.S. 1059 (1979)). Finally, the court referred to its responsibilities to address the important issues of state law raised by the parties. The court stated it had the power to declare "whether or not the acts of the Legislature of the State are in effect," and its failure to exercise this power "would do a disservice not only to the two districts involved in this case, but the entire state." App. 7a.

The state supreme court's decision rested on two grounds. First, the State properly submitted for preclearance in July 1986 the *entire* Uniform School Law, including the repealer of § 37-7-611. App. 15a. Second, the preclearance by the Attorney General of the amended version of § 37-7-103 impliedly resulted in the preclearance of the repealer of § 37-7-611 even if it had not been submitted because the two statutes are "clearly inconsistent." App. 14a.[17]

The thrust of the decision below was that the State properly submitted the Uniform School Law for three reasons. First, the entire Uniform School Law "was formally submitted to the U.S. Attorney General on July 22, 1986."

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[16] The state supreme court reversed the trial court's award of sanctions to Respondents under Miss. R. Civ. P. 11, finding "a very real dispute over the status of the school districts in this case." App. 20a.

[17] By reaching these issues, the court obviously concluded the repeal of § 37-7-611 was subject to § 5 preclearance.

App. 16a. Second, the looseleaf booklet accompanying the submission set "forth each section of the current law followed by each applicable section of [the Uniform School Law] for explanatory purposes." *Id.* The sections of the Uniform School Law, including § 47, dealing with the creation and operation of the several types of school districts were "immediately followed by Section 52 which establishes *one, and only one*, method by which school districts are abolished, altered or created." *Id.* Finally, § 52, which amended § 37-7-103, "was specifically *pointed out* in the July 22, 1986, letter of submission of the entire [Uniform School Law] by the Mississippi Attorney General." App. 16a.

The court also concluded the Attorney General's "reading of his own letter is contrary to any rational interpretation of that letter." App. 14a.[18] In addition, the deference ordinarily accorded the Attorney General's interpretation of the Voting Rights Act did not apply in this case because he had "obviously applied the wrong regulations." *Id.*[19]

The second ground on which the state court based its decision was "black letter principles of statutory construction." *Id.* The court reasoned that § 37-7-103, as amended by the Uniform School Law, addressed the circumstances under which the boundaries of municipal and other school districts could be altered. If not expressly repealed, § 37-7-611 was implicitly repealed by § 37-7-103. *Id.* "Assuming, for argument only, the repeal of § 37-7-611 was not sub-

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[18] The court apparently referred to the Attorney General's explanation in his May 25, 1990 objection letter of the August 29, 1986 letter in which he did not interpose an objection to the voting changes identified by the State in its July 22, 1986 submission.

[19] In his May 25, 1990 objection letter, the Attorney General cited two decisions of the Court and 28 C.F.R. §§ 51.26(d), 51.27 as support for the proposition that states must submit a voting change to the Attorney General in an "unambiguous and recordable manner." These two specific regulations were promulgated after the July 1986 submission by the State. The two decisions cited were *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969) and *McCain v. Lybrand*, 465 U.S. 236 (1984).

mitted for preclearance, the two statutes which were specifically precleared, §§ 37-7-103 and 113 are clearly inconsistent with § 37-7-611. A repeal may arise by necessary implication from the enactment of a subsequent act." *Id.* (quoting 1A N. Singer, *Statutes and Statutory Construction* § 23.09, at 332 (4th ed. 1985)).[20]

REASONS FOR GRANTING THE WRIT

I. The Mississippi Supreme Court's interpretation of the preclearance requirements of § 5 of the Voting Rights Act (a) conflicts with decisions of the Court and (b) the objectives of the Act itself.

In derogation of the clear aims of the Voting Rights Act, the Mississippi Supreme Court has permitted a potentially discriminatory voting change to be carried out despite an objection to the change by the Attorney General. The court's conclusion that the State's submission of the voting change was proper and that the Attorney General's objection was untimely is in direct conflict with the Court's decision in *McCain v. Lybrand*, 465 U.S. 236 (1984).

The decision below also significantly reduces the responsibility of jurisdictions covered by the Voting Rights Act to present clearly and to explain adequately voting changes submitted to the Attorney General for preclearance. The diminution of the burden on submitting jurisdictions will create administrative problems for the Attorney General. Ultimately, the purpose envisioned by

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[20] Prior to this case, the state supreme court had addressed the preclearance status of the repeal of § 37-7-611 but reached different conclusions. App. 19a-20a & n.5. *Compare Harrison County v. City of Gulfport*, 557 So. 2d 780, 788 (Miss. 1990) ("Thus, until preclearance is forthcoming, we must enforce the law as it existed before the objected-to change.") *with In re Enlargement of Corporate Boundaries of Booneville, Mississippi*, 551 So. 2d 890, 894-95 (Miss. 1989) ("The chancellor was correct in concluding that the annexation would not affect the status quo of the Prentiss County School System and in making his determination based on the repeal of § 37-7-611."). In those cases, however, the court did not have before it a complete record of the State's submissions. App. 7a n.5.

Congress for this alternative approach to preclearance—providing states with an expeditious method of having nondiscriminatory voting laws implemented without undue delay—will be disserved.

A. The decision below conflicts with the Court's decisions that require states to identify clearly the voting changes submitted for review.

The Court's initial statement regarding whether a state's § 5 submission complied with the Voting Rights Act appeared in *Allen v. State Board of Elections*, 393 U.S. 544 (1969).

> A fair interpretation of the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act.

Id. at 571. In *United States v. Board of Commissioners*, 435 U.S. 110 (1978), the Court elaborated on the standard required of § 5 submissions by emphasizing "that the purpose of § 5 is to establish procedures in which voting changes can be scrutinized by a federal instrumentality before they become effective." *Id.* at 136. Although the Voting Rights Act provides that inaction by the Attorney General could constitute preclearance of a voting change, "the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." *Id.*

The Court reaffirmed these obligations of a covered jurisdiction in *City of Rome v. United States*, 446 U.S. 156 (1980). Both the Department of Justice regulations and the Court's decisions require a jurisdiction to submit a voting change to the Attorney General in an "unambiguous and recordable manner." *Id.* at 169 n.6 (citing *Allen* and 28 C.F.R. § 51.10 (1979)). This requirement affords the Attorney General "an adequate opportunity to determine the purpose of the electoral changes and whether they will

adversely affect minority voting in that jurisdiction." 446 U.S. at 169 n.6.

In *McCain*, the Court provided its most extensive direction on this issue. After reviewing the history and purposes of the Voting Rights Act, and in particular the method of preclearance permitted by submitting a voting change to the Attorney General, the Court stated:

> [I]t is apparent that ambiguity concerning the scope of a preclearance is more likely if the State opts for the more expeditious method: silence constitutes consent under that method, and even when the Attorney General affirmatively states he has no objection, ambiguity may be present if the State's submission itself is ambiguous.

465 U.S. at 247. Furthermore, if there is "any ambiguity in the scope of the preclearance request, the structure and purpose of the preclearance requirement plainly counsel against resolving such ambiguities in favor of the submitting jurisdiction . . . . " *Id.* at 257. Thus, submissions to the Attorney General must "be carefully construed to protect the remedial aims of the Act." *Id.*

The conflict between the decision below and *McCain* could hardly be more pronounced. Based on Mississippi's extensive experience with the preclearance procedures, the State was "on notice that a preclearance is limited to the changes which a covered jurisdiction has identified by its submission." *McCain*, 465 U.S. at 251 n.21. The State's submission of the Uniform School Law did not contain an explanation of the process by which municipal school district boundaries automatically extend to encompass territory in an adjacent school district after an annexation by its parent municipality. Nor did the submission indicate that this process was repealed by § 47 of the Uniform School Law. Moreover, the submission is utterly silent about the significant change in voting effected by the repeal of § 37-7-611: the residents of a city who are also residents of a suburban school district can, by virtue of their participation in city council elections, directly affect

the selection of the members of the city school board who are appointed by the city council. These residents will also retain the right to elect the board members of the suburban school district.

The discussion of the amendment to § 37-7-103 in § 52 in the submission simply reveals that any school district could voluntarily agree with any other school district to a revision of the boundaries of the districts. App. 37a. The submission of § 52 for preclearance cannot reasonably be read to have put the Attorney General on notice of the need to analyze whether and how the unexplained automatic extension policy of § 37-7-611 would be affected by § 52.[21]

Based on the rationale of the state court, the Attorney General should have gleaned this understanding from the bare citation of fifty-six statutes repealed by §§ 47-51 of the Uniform School Law and from § 52, which established the sole method of abolishing, altering or creating school districts. App. 16a. Significantly, the State in its submission did not explain the effect of § 52 on voting as it related to other sections of the Uniform School Law.

The court also failed to accord adequate weight to the correspondence concerning the July 1986 submission. The Attorney General plainly viewed the submission as being limited to those changes identified in the submission. *See McCain*, 465 U.S. 251 ("[T]he request for preclearance was viewed as limited to the change in election practices effected by [the act]."); *see also id.* at 251 n.20. The state court ignored the significance of "after-the-fact" statements of the Attorney General "in determining whether a particular change was actually precleared in analogous circumstances." *Id.* at 255-56 (citing *United States v. Georgia*, No. C76-1531A (N.D. Ga., Sept. 30, 1977), *summarily*

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[21] The State did not specifically identify and discuss the repeal of § 37-7-611 in its submission because it apparently concluded the repeal did not affect voting. App. 145a.

aff'd, 436 U.S. 941 (1978)).[22] Both the Attorney General and the State considered the 1986 submission to be limited to the thirteen voting changes specifically identified and explained in the submission.[23]

The court's holding that the preclearance of the voting changes identified by § 52 necessarily meant that other unidentified voting changes effected by § 47 were precleared is contrary to the holding in *McCain*: "A request for preclearance of certain identified changes in election practices which fails to identify other practices as new ones thus cannot be considered an adequate submission of the latter practices." *Id.* at 256-57.[24] In sum, "[t]he broad scope given to the [1986 submission] by the [Mississippi Supreme Court] . . . [is] inconsistent with the foregoing governing principles." *Id.* at 257.[25]

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[22] "After-the-fact" statements of the Attorney General are a two-edged sword. In *United States v. Georgia*, the three-judge panel relied on a post-submission letter of the Attorney General to find that a particular voting change had been submitted and precleared.

[23] The title of an act submitted for review could be relevant by defining the scope of a preclearance request. *See McCain*, 465 U.S. at 251 ("[t]he title of the 1971 amendment unambiguously identified the changes in election practices which it effected . . . and served to define the scope of the preclearance request"). The title of the act submitted by Mississippi - the "Uniform School Law of 1986" - obviously conveyed no sense of the voting changes contained in the Law.

[24] *McCain* does state that "[w]hen a jurisdiction adopts legislation that makes clearly defined changes in its election practices, sending that legislation to the Attorney General merely with a general request for preclearance pursuant to § 5 constitutes a submission of the changes made by the enactment . . . . " 465 U.S. at 256. This language provides no support to the State because the changes effected by the repeal of § 37-7-611 were not "clearly defined" by the Uniform School Law.

[25] Since 1984, the Court has summarily affirmed decisions that found a state's submission incomplete or ambiguous in light of *McCain*. *See Brooks v. State Board of Elections*, No. CV288-146 (S.D. Ga. Dec. 14, 1989), *summarily aff'd*, ___ U.S. ___, 112 L.Ed.2d 243 (1990); *Haith v. Martin*, 618 F. Supp. 410, 413 (E.D.N.C. 1985), *summarily aff'd*, 477 U.S. 901 (1986).

In addition, the Mississippi Supreme Court's reasoning conflicts with

The Mississippi Supreme Court did not discuss *McCain*, but instead relied primarily on *Morris v. Gressette*, 432 U.S. 491 (1977). The decision in *Morris*, however, is premised on the Attorney General's failure to object to a "complete submission." 432 U.S. at 502, 504 & n.19; *see McCain*, 465 U.S. at 256 n.28. The adequacy of the submission in *Morris* was not questioned. The central issue in that case concerned the scope of judicial review of the Attorney General's failure to interpose a timely objection under the Voting Rights Act. 432 U.S. at 493.[26]

B. The failure to insist upon a clear statement of the changes submitted undermines the Voting Rights Act.

In addition to the conflicts described above, the Mississippi Supreme Court's decision raises important issues concerning the effective administration of § 5 of the Voting Rights Act. Significantly, the decision is contrary to the Attorney General's interpretation of the Act and the regulations promulgated by the Department of Justice.

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decisions of other courts. For example, in *East Flatbush Election Committee v. Cuomo*, 643 F. Supp. 260 (E.D.N.Y. 1986) (three-judge court), the city argued that certain voting changes had been submitted "with a package of other material and obtained the Attorney General's implicit approval in 1983." *Id.* at 265. The court disagreed, noting that although the Attorney General did not object to the changes submitted, he later took the position that the specific change at issue had not been specifically highlighted in the earlier submission and, therefore, had not been precleared. The city resubmitted the change to the Attorney General. *Id.*; *accord County Council of Sumter County v. United States*, 555 F. Supp. 694, 703 (D.D.C. 1983) (three-judge court) ("a political subdivision must state that it desires preclearance before it can claim preclearance by silence"); *United States v. Victoria Independent School Dist.*, No. V-86-17 (S.D. Tex., Nov. 14, 1986) (three-judge court) ("[T]he burden of proof is on political jurisdictions submitting a plan to persuade the Court that its method of election was clearly stated in its plan and has been approved. Ambiguities of a plan are to be resolved against the political jurisdiction.").

[26] The state court also relied on *Woods v. Hamilton*, 473 F. Supp. 641 (D.S.C. 1979) (three-judge court). The precedential force of *Woods* was significantly weakened by the later decision of the Court in *McCain*.

Today, virtually all voting changes are submitted by covered jurisdictions to the Attorney General for preclearance because of the cost and time constraints in litigating in the District of Columbia District Court.[27] By allowing for the administrative method of preclearance, however, "Congress in no way intended that the substantive protections of § 5 be sacrificed in the name of expediency." *McCain*, 465 U.S. at 246. Under either method, the covered jurisdiction bears the burden of proving that the change in voting does not have a discriminatory purpose or effect, and in both instances "federal officials are confronted with the same 'difficult substantive issue.' " *Id.* at 247 (quoting *Allen*, 393 U.S. at 558). With more emphasis on the administrative method of preclearance, the content and specificity of the submission by the covered jurisdiction becomes more critical. The increased likelihood of ambiguity in this method has already been discussed in the context of the conflict between the decision below and *McCain*.

Under the Mississippi Supreme Court's decision, a state could claim that the submission of an entire act was complete and unambiguous, even without specifically identifying every voting change, as long as the state includes the catch-all phrase "the entire act is submitted for review." In the face of this decision, the Attorney General's response in all but the clearest of submissions will be to interpose an objection or to request additional information rather than risk approving a voting change not identified in the submission but otherwise a part of the "entire act" submitted for review. This response, however, might well

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[27] The two alternative methods for preclearance set forth in § 5 are (1) by filing for a declaratory judgment in the District Court for the District of Columbia or (2) by submitting a voting change to the Attorney General. *See, e.g., Morris v. Gressette*, 432 U.S. 491, 502 (1977). The former method is the "basic mechanism" for preclearance. *McCain*, 465 U.S. at 247. In recognition of the potential delay in seeking preclearance by litigation, Congress provided states with a "speedy alternative method of compliance." *Morris*, 432 U.S. at 503; *see Allen*, 393 U.S. at 549 ("The provision for submission to the Attorney General merely gives the covered State a rapid method of rendering a new state election law enforceable.").

delay "the implementation of validly enacted, nondiscriminatory state legislation," a primary objective of the alternative preclearance method of the Voting Rights Act. *See Morris*, 432 U.S. at 503. Although this response by the Attorney General would be the most prudent exercise of his responsibilities, it "would only add acrimony to the administration of § 5." *Georgia v. United States*, 411 U.S. 526, 540-41 (1973).[28]

The state court also held, in effect, that a submission is complete and unambiguous, even though the voting change is not explained, if the code section effecting the change is identified. The Attorney General reviews more than state laws; he reviews voting changes brought about by state laws. *See McCain*, 465 U.S. at 251 ("As we previously observed, the preclearance procedures mandated by § 5 of the Voting Rights Act focus entirely on *changes* in election practices."). According to the state court, the Attorney General's May 25, 1990 letter characterized the submission of the Uniform School Law as incomplete because it "did not contain any reference whatsoever to the repeal of Miss. Code Ann. § 37-7-611." App. 8a. What the Attorney General actually stated was that the prior submission of the Uniform School Law "identified specific *voting changes*" but did not contain "any reference to the *voting changes* which the state now claims were precleared." App. 174a (emphasis added.) Contrary to the regulations in force in 1986, the state supreme court equates the mere notation of the repeal of a particular code section with the identification of the resultant voting

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[28] In the context of a declaratory judgment proceeding to obtain preclearance, a covered jurisdiction could hardly argue that the District of Columbia District Court precleared a voting change that was not identified in the complaint or litigated at trial. To hold a state to a less demanding standard in seeking preclearance from the Attorney General would render the declaratory judgment route superfluous. *Cf. Georgia v. United States*, 411 U.S. at 538 ("Any less stringent standard [for the burden of proof] might well have rendered the formal declaratory judgment procedure a dead letter by making available to covered States a far smoother path to clearance.").

change. *See McCain*, 465 U.S. at 255 ("The regulations indicate that the focus of the Attorney General's scrutiny of a statute was, understandably, limited to specific changes submitted for consideration."); *United States v. Bd. of Commissioners*, 435 U.S. at 136 n.26 ("[I]t bears noting that the Attorney General's regulations provide that such [submission] letters should clearly set forth the proposed change affecting voting for which clearance is being sought.").[29]

The state supreme court found fault with the Attorney General for not requesting additional information if he considered the State's July 1986 submission to be incomplete. In fact, the court emphasized the Attorney General's duty to do so under the regulations in effect in 1986. App. 13a (quoting 28 C.F.R. § 51.35 (1986)). This conclusion erroneously presumes the Attorney General viewed the State's submission as presenting the entire Uniform School Law for approval. Rather, the Attorney General considered only the thirteen specifically identified voting changes to be before him for review. The Attorney General's response on August 29, 1986 confirmed this view of the submission: "The Attorney General does not interpose any objection to the voting changes occasioned by [the Uniform School Law], as identified in your July 22, 1986, letter." App. 112a. As to the thirteen specifically identified voting changes, the State's submission was complete. Thus, there was no reason to request additional information regarding those changes.[30]

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[29] The regulatory requirement that covered jurisdictions clearly identify and explain the voting changes submitted for review has existed since the regulations were first promulgated. *See* 28 C.F.R. § 51.10 (1971). The requirement later appeared at *id.* § 51.25 (1981), and is currently codified at *id.* § 51.27 (1990).

[30] If anything, the lack of a request for additional information indicates the Attorney General was not aware of the voting change created by the repeal of § 37-7-611. *See McCain*, 465 U.S. at 254 n.24 ("If the Attorney General was aware that the Act required preclearance and had never been precleared, his failure to request either an explanation or at least some additional information would be difficult to comprehend.").

The state court also misperceived the purpose of the regulation allowing for a suspension of the 60-day period for action by a request for additional information. "The judgment that the Attorney General must make is a difficult and complex one, and no one would argue that it should be made without adequate information." *Georgia v. United States*, 411 U.S. at 540. The regulation enables the Attorney General to make an informed decision by requesting additional information relevant to the changes identified in the initial submission. The regulation is not a mechanism for the Attorney General to ferret out other potential voting changes not identified by the state.

This case presents the converse of *McCain* in which the Court held that the "significance the District Court attached to the Attorney General's request for additional information was wholly unwarranted." 465 U.S. at 252.[31] The State knows better than anyone what it wishes precleared, and the burden of uncovering voting changes in a submission should not be the responsibility of the Attorney General.

In any event, the court below did not indicate what additional information the Attorney General should have requested. Apparently, when faced with a submission of a voluminous act that may only identify a few voting changes, the Attorney General would be required to determine by his own review and research whether other voting changes exist or request additional information to have the state identify the voting changes not presented in the initial submission. If the state in response does not identify any additional voting changes, and the Attorney

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[31] The request for information by the Attorney General in *McCain* was "merely relevant to an identification of the changes which he had been requested to approve or to an evaluation of the purpose and effect of the changes made by the" submission. 465 U.S. at 252-53. Just as the Attorney General's request for and receipt of information "in no way suggest that he approved changes that he was not requested to approve," *id.* at 253, the Attorney General cannot logically be held to have approved unidentified or unexplained changes merely because he did not request information relevant to those changes.

General does not interpose an objection to the submission, the Attorney General will still be faced with the prospect of having precleared unidentified voting changes. The significance the state court attached to the Attorney General's lack of a request for additional information was "wholly unwarranted."[32]

The court's reliance on the absence in 1986 of any requirement that the submitting jurisdiction submit a copy of the law repealed or amended is similarly misplaced. Merely including a copy of the repealed statute does not transform an incomplete submission into a complete one. The regulations in 1986 required the State to provide "a clear statement of the change" and to explain "the difference between the submitted change and the prior law or practice . . . " 28 C.F.R. § 51.25(b) (1986).

The state court's decision should not be viewed as limited to an interpretation of regulations that are no longer in force or that have been revised to correct the problems illustrated by this case. Rather, the issue concerns the fundamental requirement that covered jurisdictions submit voting changes to the Attorney General in an unambiguous and recordable manner. This obligation arises from the Voting Rights Act itself, *see Allen*, 393 U.S. at 571, and has always been required by the Department of Justice regulations, *see City of Rome*, 446 U.S. at 169 n.6.

The conclusion by the state supreme court that the Attorney General exercised his important § 5 responsibilities and precleared the repeal of § 37-7-611 is as flawed as the district court's decision that was reversed in *McCain v. Lybrand*.

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[32] The Court need not speculate about the type of information the Attorney General would have needed to make his decision under § 5 regarding the repealer of § 37-7-611 had it been properly identified in the July 1986 submission. *Cf. McCain v. Lybrand*, 465 U.S. at 253. On February 28, 1988, in response to the specific submission of the repealer of § 37-7-611, the Attorney General requested detailed information to determine the practical effects of the repeal of § 37-7-611. App. 125a-129a.

> Just as "no one would argue" that the Attorney General's "difficult and complex" decision "should be made without adequate information," an argument that such a decision has been made when the record indicates adequate information was lacking carries little weight. And it would require a wild flight of imagination to suggest that the Attorney General recognized that the [repeal of § 37-7-611] effected [voting] changes . . . and then did not ask state officials to explain the failure to preclear those changes, but instead embarked on the task of gathering the information necessary to evaluate those alterations on his own rather than requesting state officials to provide the information to him . . . . It is even more unlikely that he would have kept his consideration and approval of the changes made by the [repeal of § 37-7-611] a secret from state officials in his letter preclearing the [other changes submitted in 1986].

McCain, 465 U.S. at 253-54 (citation and footnote omitted).

II. The doctrine of implied preclearance by operation of state law conflicts with decisions of the Court and the Voting Rights Act.

The state court held that, even if the repeal of § 37-7-611 had not been submitted for preclearance, that section was repealed by implication because §§ 37-7-103 and -113 were "specifically precleared" and are "clearly inconsistent" with § 37-7-611.[33] By enforcing the repeal of § 37-7-611 without the repealer being precleared effectively establishes a doctrine of implied preclearance based on the

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[33] The amended version of § 37-7-113, § 57 of Uniform School Law, was not specifically identified in the State's July 22, 1986 submission. *See supra* p. 9. The discussion regarding the failure to identify specifically § 47, which repealed § 37-7-611, is equally applicable to § 57. The Attorney General pointed out in February 1988 that the amended version of § 37-7-113 had never been submitted for preclearance. App. 128a.

operation of state law. This decision exceeds the authority granted state courts under the Voting Rights Act as established by *Hathorn v. Lovorn*, 457 U.S. 255 (1982). In that case, the Court held that when "a party to a state proceeding asserts that § 5 renders the contemplated relief unenforceable, . . . the state court must examine the claim and refrain from ordering relief that would violate federal law." *Id.* at 269-70.[34]

To the extent the state court held that the Attorney General precleared by implication the repeal of § 37-7-611 because of his preclearance of § 37-7-103, the decision conflicts with the Court's precedent that requires actual evaluation by the Attorney General of voting changes submitted for his review. *See McCain*, 465 U.S. at 254 ("[T]here is insufficient evidence for a finding that the Attorney General actually considered the changes made by the 1966 Act in preclearing the 1971 amendment . . . . "); *United States v. Bd. of Commissioners*, 435 U.S. at 136.

Moreover, the state court's decision imposes on the Attorney General a constructive knowledge of state law. The decision below suggests the Attorney General should have known that the amendment to § 37-7-103 effectively repealed § 37-7-611. App. 14a. This requirement is inconsistent with the Attorney General's obligations under § 5 and the Court's pronouncements regarding state law considerations in the context of the preclearance requirements of the Voting Rights Act.

The Court has held that "the Attorney General and the District Court for the District of Columbia should be free to decide preclearance questions on the essentially factual issues of discriminatory purpose and effect. We doubt that Congress intended to force either into speculation as to state law." *City of Lockhart v. United States*, 460 U.S.

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[34] The Mississippi Supreme Court had ordered an election for county school board members without requiring compliance with § 5 of the Voting Rights Act. The Court prohibited Mississippi courts from further implementation of the voting changes until the parties complied with § 5. 457 U.S. at 270.

125, 133 n.8 (1983). In *United States v. Board of Commissioners*, the Court rejected the notion that the application of state law can result in the preclearance of voting changes not actually evaluated by the Attorney General. There, the city sought and received preclearance of a referendum to change its form of government. Although the Attorney General indicated in his preclearance letter that the change to a new form of government was also subject to § 5, a three-judge district court concluded the Attorney General knew or should have known that, if the referendum passed, the city would be required to follow a state law that mandated a specific form of government for the city. 435 U.S. at 117. The Court dismissed as "irrelevant that the Attorney General might have been on notice" of this provision of state law and labelled as "extreme" the "position that the Attorney General should be charged with notice of all provisions of local law." *Id.* at 137 & n.28. Despite these pronouncements by the Court, the state supreme court held that the Attorney General approved a voting change—not because of the absence of a discriminatory purpose and effect—but because of the application of state law rules of statutory interpretation.

The doctrine of "implied preclearance" undermines Congress' intent for the Voting Rights Act "to reach 'the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race.' " *City of Pleasant Grove v. United States*, 479 U.S. 462, 468 (1987) (quoting *Allen*, 393 U.S. at 565). As the Court has frequently observed, the Voting Rights Act reflected "Congress' firm intention to rid the country of racial discrimination in voting," and, as a result, includes "unusual" and "severe" measures. *Allen*, 393 U.S.at 548, 556. The § 5 preclearance requirement "is perhaps the most stringent . . . and certainly the most extraordinary." *McCain*, 465 U.S. at 244. The presence of these requirements reflected Congress' concern "that covered jurisdictions would exercise their ingenuity to devise new and subtle forms of discrimination." *Hathorn v. Lovorn*, 457 U.S. 255, 268 (1982). In fact, § 5 establishes a pre-

sumption that covered jurisdictions, like Mississippi, would likely attempt to "evade the remedies for voting discrimination contained in the" Voting Rights Act. *See McCain*, 465 U.S. at 245 (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 334-35 (1966)). Allowing a state to determine that its own voting changes can be enforced without complying with the Voting Rights Act turns the presumption on its head.

In sum, § 5 is concerned "with the reality of changed practices as they affect [minority] voters." *Georgia v. United States*, 411 U.S. at 531. The Attorney General determined the repeal of § 37-7-611 would adversely affect minority voters by freezing in place the boundaries of city school districts unless suburban school districts agreed to a revision of the districts' boundaries and by permitting residents of the suburban school district to participate in the selection of board members in both the suburban and city school districts. The potential for discrimination in this electoral scheme caused the Attorney General to interpose an objection when the repeal of § 37-7-611 was specifically submitted for review in December 1987. The Attorney General's objection, however, was found to be untimely because of his preclearance in August 1986 of other related voting changes, even though the State's submission contained no explanation of the change created by the repeal of § 37-7-611. Furthermore, it is clear the Attorney General did not consider or evaluate the voting change effected by the repeal of § 37-7-611 until it was expressly submitted for approval. The Mississippi Supreme Court's enforcement of the repeal of § 37-7-611 subverts the purposes of the Voting Rights Act by permitting a potentially discriminatory voting change to become effective without being properly submitted to federal officials for review.

The state court's adoption of the doctrine of implied preclearance infringes on the Attorney General's duty to subject voting changes to scrutiny and his ability to determine whether the changes will adversely affect minority voters. In the light of the structure, purpose and nature of § 5, the decision below cannot be allowed to stand.

CONCLUSION

For these reasons, this Petition for Certiorari should be granted.

Respectfully submitted,

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June 3, 1991

APPENDICES

APPENDIX A

Supreme Court of Mississippi

No. 07-CA-59534.

GREENVILLE PUBLIC SCHOOL DISTRICT; Mary Haynes, Carolyn Morris, Ann Brent, Roy Campbill, III, and John Richards, in their official capacities as members of the Greenville Public School District Board of Trustees

v.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT; Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr. and Martha Carroll, in their official capacities as members of the District Board of Education.

Dec. 12, 1990.

As Corrected on Denial of Rehearing March 6, 1991.

Before ROY NOBLE LEE, C.J., and ROBERTSON and BLASS, JJ.

BLASS, Justice, for the Court:

Plaintiff, Greenville Public School District, sought a declaratory judgment that 14 square miles of territory lying in the Western Line Consolidated School District automatically became part of the Greenville District when that territory was annexed by the City of Greenville. This would have been true under Miss.Code Ann. § 37-7-611, prior to

the adoption of The Education Reform Act of 1986, ch. 492, Laws of Mississippi 1986, Section 47 of which purports to repeal that section. Plaintiff contends that the repealing section was not effective because, it argues, the section was not precleared under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.

Greenville further alleged that although the Mississippi Attorney General submitted portions of the legislation, section 47 of Chapter 498 was neither submitted nor precleared. Defendant, Western Line, counterclaimed seeking costs and attorney fees under Rule 11(b) and praying that Greenville be enjoined from interfering with the collection of Western Line school taxes on property located within the proposed corporate limits of Greenville.

On Defendant's Motion for Summary Judgment, the circuit court ordered: (1) that funds collected and escrowed on behalf of Greenville Public School District be released and returned to those from whom collected and that the plaintiff pay the reasonable and necessary expenses incurred in making refunds to taxpayers; (2) that despite uncertainty of the repeal of § 37-7-611, the circuit court lacked jurisdiction to rule on the applicability of section 5 of the Voting Rights Act of 1965, until definitive rulings were made by the Supreme Court of Mississippi or the Attorney General of the United States; (3) that due to teacher employment contract requirements and the need to notify students of their status each school district was to retain its respective status quo; (4) that plaintiff pay defendant's expenses and attorney fees. Plaintiff has appealed.

For the reasons which follow, we find that Greenville was not entitled to the declaratory judgment, and was properly enjoined from disturbing the status quo of the respective school districts, but that the circuit court erred in ordering plaintiff to pay defendant's expenses and attorney fees.

I.

On July 22, 1986, The Education Reform Act of 1986, Senate Bill No. 2117, Chapter 492, Laws of Mississippi 1986, was submitted to the Attorney General of the United States for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. The submission included the act in its entirety; a copy of the roll call votes of both houses; and a looseleaf booklet entitled "Senate Bill No. 2117—Comparison of Current Law and New Law" which set forth each section of the then current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes. The submission states in part, "[f]or the sake of brevity, the submission will only set forth the particular sections which deal primarily with the voting rights even though *the complete act is submitted for review.*". (emphasis added). The submission then lists specific provisions of the Act among them Section 52, amending Miss.Code Ann. § 37-7-103.

The stated purpose of the legislation was to "provide that all public school districts in the state of Mississippi shall have a common system of administration." The legislation repealed, enacted and re-enacted numerous statutes as part of an statewide over-haul of the boards administering public education. Prior to the enactment, several articles controlled the boards of school districts, depending on the nature of the districts.[1] Miss.Code Ann. § 37-7-103 (1972) was enacted to control the abolition, alteration or creation of school districts after the reform. This statute gives the school board of any school district full jurisdiction, power and authority to alter the boundaries of any school district and requires the mutual consent of adjoining districts in the alteration of abutting bound-

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[1] Article 11 Municipal Separate School Districts, Miss.Code Ann. §§ 37-7-601 to 639 (1972). Article 13 Special Municipal Separate School Districts, §§ 37-7-701 to 745. Article 15 Line School Districts, §§ 37-7-801 to 811. Article 17 Isolated School Districts, §§ 37-7-901 to 911.

aries. All conflicting statutes concerning school boundaries were repealed, including § 37-7-611.

Section 47 of the Bill, not among the highlighted sections but part of the package, repeals those sections of Mississippi Code of 1972 which provide for the creation and operation of municipal separate school districts, including § 37-7-611.

By letter of August 29, 1986, Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, advised the Mississippi Attorney General that the Justice Department would interpose no objection to the voting changes occasioned by Chapter 492, S.B. No. 2117 (1986). The letter points out that the failure to object would not bar any subsequent judicial action to enjoin the enforcement of any change should additional information which would require objection materialize.

For reasons which do not appear in this record, on December 30, 1987, Mississippi Attorney General Pittman again submitted Chapter 492, Section 47 to the U.S. Attorney General for preclearance. By letter dated March 31, 1989, the Attorney General of the United States objected to the repeal of § 37-7-611. The Mississippi Attorney General's request for reconsideration of this objection was most recently denied by letter of May 25, 1990.

The annexation by the City of Greenville of the territory in question, the action which gave rise to the instant controversy, also required preclearance under the Voting Rights Act. Preclearance had not been obtained when this suit was commenced. The U.S. Attorney General interposed an objection to the annexation by the City of Greenville[2] of the territory at issue in this case, on February 10, 1989. This objection was withdrawn on February

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[2] The annexation was affirmed by this court in *Western Line Consol. v. City of Greenville*, 465 So.2d 1057 (Miss.1985) and *City of Greenville v. Farmers, Inc.*, 513 So.2d 932 (Miss.1987).

11, 1990, on Greenville's second request for reconsideration.

II.

We are called upon here to examine The Education Reform Act of 1986, in conjunction with Section 5 of the Voting Rights Act of 1965 and proceedings undertaken thereunder, to determine the effect on the school districts in question. This requires a determination of whether, and to what extent, the Education Reform Act of 1986 has been precleared, pursuant to section 5 of the Voting Rights Act of 1965.

State courts have inherent authority, and are presumptively competent, to adjudicate claims arising under the laws of the United States. *Yellow Freight Sys. v. Donnelly*, ___ U.S. ___, ___, 110 S.Ct. 1566, 1568, 108 L.Ed.2d 834, 839 (1990), quoting *Tafflin v. Levitt*, 493 U.S. ___, 110 S.Ct. 792, 107 L.Ed.2d 887 (1990); *see Gulf Offshore Co. v. Mobile Oil Corp.*, 453 U.S. 473, 477-78, 101 S.Ct. 2870, 2874-75, 69 L.Ed.2d 784 (1981); *Claflin v. Houseman*, 93 U.S. 130, 136-37, 23 L.Ed. 833 (1876). "[T]he presumption of concurrent jurisdiction can be rebutted by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore*, 453 U.S. at 478, 101 S.Ct. at 2875, 69 L.Ed.2d at 791. "[E]ven a finding of exclusive federal jurisdiction over claims arising under a federal statute usually 'will not prevent a state court from deciding a federal question collaterally.' " [citations omitted] *Hathorn v. Lovorn*, 457 U.S. 255, 266, 102 S.Ct. 2421, 2428, 72 L.Ed.2d 824, 835 (1982) (quoting *Gulf Offshore*, 453 U.S. at 483, n. 12, 101 S.Ct. at 2878, n. 12).

We recognize this concurrent jurisdiction, and its logical corollary, the duty and obligation of the courts of this state to enforce rights created under federal statutes. *Burrell*

v. Mississippi State Tax Comm'n, 536 So.2d 848, 863 (Miss.1988).

The courts of this state have no authority to *grant* preclearance which may be secured in only two ways: (a) administratively, via submission to the Attorney General of the United States, coupled with his failure to interpose timely objection (about which we say more below) or (2) judicially, via a declatory judgment action in the United States District Court for the District of Columbia. 42 U.S.C. § 1973c. There is nothing grudging in our acceptance of this view. *See Harrison County v. City of Gulfport*, 557 So.2d 780, 788 (Miss.1990) (and cases cited therein). However, "other courts may decide the distinct question of whether a proposed change is subject to the Act." *Hathorn*, 457 U.S. 255, 267, 102 S.Ct. 2421, 2429, 72 L.Ed.2d 824, 835 (citing *Allen v. State Bd. of Elections*, 393 U.S. 544, 557-60, 89 S.Ct. 817, 827-29, 22 L.Ed.2d 1 (1969)); *McDaniel v. Sanchez*, 452 U.S. 130, 101 S.Ct. 2224, 68 L.Ed.2d 724 (1981). A necessary part of the authority to decide matters pertaining to preclearance is the determination, commonly exercised by United States District Courts, of whether the United States Attorney General has interposed a valid objection within the statutory 60-day period and the related question of whether a covered jurisdiction has submitted a proposed change for preclearance. *See, e.g., Lucas v. Bolivar County, Mississippi*, 567 F.Supp. 433, 435 (N.D. Miss.1983); *Blanding v. Dubose*, 509 F.Supp. 1334, 1335 (D.S.C.1981); rev'd on other grounds, 454 U.S. 393, 102 S.Ct. 715, 70 L.Ed.2d 576 (1982); *McRae v. Board of Education*, 491 F.Supp. 30, 32 (N.D.Ga.1980); *Garza v. Gates*, 482 F.Supp. 1211 (W.D.Tex.1980); *Woods v. Hamilton*, 473 F.Supp. 641, 644-48 (D.S.C.1979). Under the authority of *Hathorn v. Lovorn*, 457 U.S. 255, 102 S.Ct. 2421, 72 L.Ed.2d 824 (1982), this Court has the power to decide questions pertaining to preclearance under § 5 of the Voting Rights Act. Under in *Garcia v. Uvalde County*, 455 F.Supp. 101, 102

(W.D.Tex.1978), this Court can review the circumstances under which the objection letter was issued in order to determine whether it was validly and timely issued. The courts of the State of Mississippi clearly must, and do, have the power to declare whether or not the acts of the Legislature of the State are in effect. This Court has that power.[3] Failure to exercise this power would do a disservice not only to the two districts involved in this case, but the entire state.

III.

HAS FEDERAL PRECLEARANCE BEEN OBTAINED FOR THE REPEAL OF MISS.CODE ANN. § 37-7-611?

Senate Bill No. 2117, entitled "The Uniform School Law of 1986", was signed by the Governor of Mississippi, on April 15, 1986. The Act was submitted to the United States Attorney General for preclearance[4] on July 22, 1986 and was received by the Department of Justice on July 23, 1986.[5] The U.S. Attorney General has sixty days from the

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[3] The language in *Bassett v. Town of Taylorsville*, 542 So.2d 918, 920 n. 3 (Miss.1989), may be a bit loose, and, to the extent it is inconsistent with what we say here, that language should be deemed modified.

[4] Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c provides two methods by which a covered jurisdiction may preclear an enactment affecting voting. One is to obtain a declaratory judgment in the U.S. District Court for the District of Columbia, that the enactment does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. The alternative is to submit the enactment or procedure to the Attorney General of the United States, who then has sixty (60) days in which to interpose an objection. Should the U.S. Attorney General fail to object, the jurisdiction is free to implement the enactment.

[5] The matter of preclearance of the "repeal" of Section 37-7-611 has been noted in *Harrison County v. City of Gulfport*, 557 So.2d 780, 788 (Miss.1990) and *In Re Enlargement of Corporate Boundaries of Booneville, Mississippi*, 551 So.2d 890, 894-95 (Miss.1989). Neither the July 22, 1986 submission, nor many other facts set forth above, were a part

receipt of the submission by the Department of Justice in which to interpose an objection. 28 C.F.R. § 51.8 (1986). During this 60-day period, the U.S. Attorney General did not request additional information. By letter of August 29, 1986, Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, advised Mississippi Attorney General Edwin Lloyd Pittman that the Justice Department would interpose no objection to the voting changes occasioned by Chapter 492, S.B. No. 2117 (1986).[6]

In his letter of May 25, 1990, the U.S. Attorney General declared that the State of Mississippi had not submitted the voting change in an "unambiguous and recordable manner," citing *Allen v. State Board of Elections*, 393 U.S. 544, 571, 89 S.Ct. 817, 834, 22 L.Ed.2d 1 (1969). *Accord, McCain v. Lybrand*, 465 U.S. 236, 104 S.Ct. 1037, 79 L.Ed.2d 271 (1984); and Procedures for the Administration of Section 5 (28 C.F.R. §§ 51.26(d), 51.27). The U.S. Attorney General took the position that the prior submission of the Uniform School Law did not contain any reference whatsoever to the repeal of Miss.Code Ann. § 37-7-611, as illustrated in the following statement:

> Both the prior submission of the Uniform School Law and the prior submission of the 1978 act identified specific voting changes adopted by those statutes, but neither submission contained *any reference* to the voting changes which the state now claims were precleared.
> (emphasis added)

The letter refers to case law interpreting Section 5 which charges the submitting jurisdiction with responsibility for identifying voting changes, not the United States Attorney

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of the record before this Court in *Harrison County* or *City of Booneville*, nor were these matters otherwise brought to the attention of this Court until this case.

[6] [See Appendix H, pp. 112a-113a.]

General, and concludes that the State of Mississippi, should have uncovered voting changes "of which the state itself seemingly was unaware at the time prior submissions were made." The U.S. Attorney General then negates any claim made by the State of Mississippi that the repeal of section 37-7-611 has been previously submitted and precleared.

A.

To ascertain the status of Mississippi Law, we are called upon to determine whether or not the submission in 1986 of the Education Reform Act included a submission of the repealer of § 37-7-611.

On July 22, 1986, The Education Reform Act of 1986, Senate Bill No. 2117, Chapter 492, Laws of Mississippi 1986 was submitted to the Attorney General of the United States for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *The submission included the act in its entirety; a copy of the roll call votes of both houses; and a looseleaf booklet entitled "Senate Bill No. 2117—Comparison of Current Law and New Law" which set forth each section of the then current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes.* The submission states in part, "[f]or the sake of brevity, the submission will only set forth the particular sections which deal primarily with the voting rights even though *the complete act is submitted for review.*" The submission then lists specific provision of the Act among which is Section 52 amending § 37-7-103, and Section 57 amending § 37-7-113. The amended §§ 37-7-103 and -113 were quoted with emphasis on the language deleted in the re-enacted section. Prior to 1986 § 37-7-103 stated:

> § 37-7-103. **Abolition, alteration or creation of districts by county board of education.**
>
> After school districts have been reconstituted and created in the manner prescribed by Article 1 of this

> chapter, the county board of education shall have full jurisdiction, power, and authority at any regular meeting thereof or at any special meeting called for that purpose, to abolish any existing district other than a municipal separate school district, to change or alter the boundaries of any such district, to create any new districts, and to otherwise create, alter, or abolish any of the school districts of such county, other than the municipal separate school districts. In addition thereto, with the consent of the board of trustees of the municipal separate school district involved, the county board of education may add to such municipal separate school districts any part of the county adjoining same, and with the consent of the board of trustees of the municipal separate school district involved, the county board may detach territory from such municipal separate school district and annex same to an adjoining district in the county school system.

The amended § 37-7-103 reads:

> *From and after July 1, 1987, the school board of any school district* shall have full jurisdiction, power, and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish *such* existing district, *or* to *reorganize*, change or alter the boundaries of any such district.[ ] In addition thereto, with the consent of the *school* board [ ] of the [ ] school district involved, the *school* board [ ] may add to such [ ] school district [ ] any part of the *school district* adjoining same, and with the consent of the *school* board [ ] of the school district involved, [ ] may detach territory from such school district and annex same to an adjoining district.[ ]

Changes in the statute were highlighted as above in the original submission. The brackets indicate language deleted, emphasis indicates language changed.

Before 1986, § 37-7-113 required only county boards to submit proposed changes to the state educational finance commission for approval prior to creating, abolishing, or altering any school district. The amended section required all school boards to submit reorganization plans to this agency, and states:

> **37-7-113. Necessity of approval by state educational finance commission.**
>
> Notwithstanding any of the foregoing provisions, it is hereby expressly provided that no order of the school board reorganizing, abolishing or altering any school district, whether same be taken with or without a petition therefor, shall be final unless and until said proposed reorganization, alteration or abolition shall be submitted to and approved by the State Board of Education. In the event the proposed action shall be disapproved by the State Board of Education, the same shall be void and of no effect. In the event of the filing of any petitions with the school board under the provisions of said sections, the school board shall verify same and make a determination of whether same are signed by the requisite number of qualified electors. The finding of the school board upon such question shall be final and conclusive for the purpose of the submission of said matter to the State Board of Education and the approval or disapproval of the action by said board.

Section 47 of the Bill[7] repeals those sections of Mississippi Code of 1972 which provide for the creation and operation of municipal separate school districts, among which is § 37-7-611, which states, in pertinent part:

> Where the corporate limits of any municipality which constitutes a municipal separate school district, either

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[7] Section 47 states: [See Appendix F, p. 75a.]

> with or without added territory, are extended so as to include the whole or any part of an existing adjacent school district in the county school system or municipal separate district, then such adjacent school district, or such part thereof as is included within the corporate limits of the municipality by reason of the extension thereof, shall thereby automatically be merged with and become a part of such municipal separate school district.
>
> * * * * * *

By this same act, those sections of Mississippi Code of 1972 providing for the creation and operation of line consolidated, isolated, special municipal separate and county school districts were also repealed.

The act was designed to create one, and only one, method by which school districts throughout the State of Mississippi were created, reorganized, abolished or altered. It was also crafted to provided that *any* change in *any* district was subject to prior approval by the state educational finance commission, to insure fiscal viability.

The U.S. Attorney General, in his letter of May 1990, cites 28 C.F.R. § 51.27 (1989), which currently governs the required contents of submission. This regulation provides that a copy of the repealed statute be included in the submission. The regulations controlling submissions in effect in 1986, when the State of Mississippi submitted Senate Bill 2117, 28 C.F.R. §§ 51.1 through 51.54, did not require the inclusion, by the covered jurisdiction, of a copy of the prior law being amended or repealed.

The required contents of a submission were set out in 28 C.F.R. § 51.25 (7-1-86 Edition). This regulation stated in pertinent part:

> § 51.25 Required contents
>
> Each submission should contain the following information or documents to enable the Attorney Gen-

> eral to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:
>
> (a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.
>
> (b) If the change affecting voting is not readily apparent on the face of the document provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

In addition, in 1986, 28 C.F.R. § 51.35 (7-1-86 Edition) governed the Attorney General's authority to request additional information from submitting jurisdictions. At that time, this regulation imposed a duty on the U.S. Attorney General to request additional information if the submission was incomplete, providing as follows:

> § 51.35. Obtaining information from the submitting authority.
>
> (a) If a submission does not satisfy the requirements of § 51.25, the attorney general *shall* request further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after the receipt of the original inadequate submission and no later than the 60th day following its receipt.

(emphasis added)

Although we recognize that federal courts defer to the interpretations of the Voting Rights Act made by the U.S. Attorney General, we cannot ignore the fact that the

Attorney General's reading of his own letter is contrary to any rational interpretation of that letter. Additionally, while recognizing that the opinion of the U.S. Attorney General is given great weight, *Blanding v. DuBose*, 454 U.S. 393, 401, 102 S.Ct. 715, 719, 70 L.Ed.2d 576, 583 (1982), we are not obliged to defer to his interpretation of the Voting Rights Act when he has obviously applied the wrong regulations. Nor are we obliged to ignore black letter principles of statutory construction.

It is clear, reading the repealed § 37-7-103 and the reenacted § 37-7-103 that the only circumstance which is addressed is that in which a municipal and county school district is altered. Even assuming § 37-7-611 was not specifically repealed, it was implicitly repealed by § 37-7-103. Assuming, for argument only, the repeal of § 37-7-611 was not submitted for preclearance, the two statutes which were specifically precleared, §§ 37-7-103 and 113 are clearly inconsistent with § 37-7-611. A repeal may arise by necessary implication from the enactment of a subsequent act. 1A N. Singer, Statutes and Statutory Construction § 23.09, at 332 (4th ed. 1985). When a subsequent enactment covering a field of operation co-existent with a prior statute cannot by any reasonable construction be given effect while the prior law remains in existence because of irreconcilable conflict between the two acts, the latest legislative expression prevails, and the prior law yields to the extent of the conflict. *Cooper v. General Dynamics, Corvair Aerospace Div.*, 533 F.2d 163 (5th Cir.1976). The intent to repeal all former laws upon a subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things and relationships ordinarily associated with that subject. Singer § 23.13, at 358.

B.

The case here is unlike that in *U.S. v. Sheffield Bd. of Comm'rs.*, 435 U.S. 110, 98 S.Ct. 965, 55 L.Ed.2d 148

(1978) in which the Board of Sheffield, Alabama wished to hold a referendum to determine voter preference for a commission or mayor-council form of government. Following the approval of a change to a mayor-council government, the U.S. Attorney General notified the city that, although there was no objection to the referendum itself, any change in the government would require a preclearance under § 5 of the Voting Rights Act. Thereafter, the U.S. Attorney General objected to the proposed method of selecting councilmen. The *Sheffield* Court held that approval of the referendum did not constitute an approval of the change in form of government under the preclearance procedures and the city had not complied with § 5 of the Voting Rights Act, and could not implement the mayor council government.

In *Sheffield*, the U.S. Attorney General specifically withheld preclearance of the change in government. In the case before this court, the U.S. Attorney General's letter specifically precleared the entire Education Reform Act, after which the U.S. Attorney General has denied that one section of that act was submitted.

Allen v. State Bd. of Elections, 393 U.S. 544, 89 S.Ct. 817, cited by the U.S. Attorney General in the letters denying preclearance of the repeal of § 37-7-611 is also distinguishable. This was a consolidation of four cases. Although none of the voting changes were "formally" submitted to the U.S. Attorney General, appellees argued that the Attorney General was aware of the changes. In rejecting this argument, the court stated that, although no formal procedure was required, the Act requires that the State in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act. 393 U.S. at 571, 89 S.Ct. at 834, 22 L.Ed.2d at 20.

It should be clear that the facts here are significantly different from those in *Allen*. First, the entire Uniform School Law of 1986, Senate Bill No. 2117, Chapter 492, Laws of Mississippi, 1986 was formally submitted to the U.S. Attorney General on July 22, 1986. Second, included in the submission was "Exhibit 'C' . . . a looseleaf booklet entitled 'Senate Bill Number 2117—Comparison of Current Law and New Law' which merely sets forth each section of the current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes." In this booklet, and in the bill, Sections 47-51, repealing the laws which provided for the creation and operation of municipal separate school districts, special municipal separate school districts, line consolidated school districts and isolated school districts, and for the reorganization of school districts in 1957, are immediately followed by Section 52 which establishes *one, and only one*, method by which school districts are abolished, altered or created. The section clearly highlights changes in the old § 37-7-103 in which the boundaries of *any* school board in the state is to be altered, only with the consent of the adjoining school board. Third, section 52 was specifically *pointed out* in the July 22, 1986, letter of submission of the entire act by the Mississippi Attorney General. The U.S. Attorney General replied, "The Attorney General does not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986) as identified in your July 22, 1986 letter."

Morris v. Gressette, 432 U.S. 491, 97 S.Ct. 2411, 53 L.Ed.2d 506 (1977) presented the question of whether the U.S. Attorney General's decision not to object to a covered state's proposed change in its laws, submitted for his consideration under § 5, was subject to judicial review. In 1971 South Carolina enacted Act 932 reapportioning the State Senate. This Act was submitted to the U.S. Attorney General for *preclearance*. Prior to the objection of the U.S. Attorney General, several suits were filed in the U.S. District Court of South Carolina challenging the Act as vio-

lative of the fourteenth and fifteenth amendments. Notwithstanding the involvement of the U.S. Attorney General, the South Carolina District Court retained jurisdiction of the case and a new reapportionment plan was filed which that court found constitutional. The U.S. Attorney General did not interpose an objection to the new plan, in deference to the District Court's decision. This failure to object to the new plan was challenged in the U.S. District Court for the District of Columbia, which directed the Attorney General to consider the plan without deference to the South Carolina court's decision, after an objection was interposed. On appeal the D.C. court affirmed. The District Court of South Carolina refused to enjoin the implementation of the new plan, holding that the requirements of § 5 were satisfied when the Attorney General failed to object within 60 days after submission, and the Administrative Procedure Act did not authorize judicial review of the Attorney General's determination not to interpose an objection in deference to the District Court's ruling. The Supreme Court affirmed.

In reaching this decision, the Supreme Court noted:

> The nature of the § 5 remedy which this Court has characterized as an "unusual" and "severe" procedure, (citation omitted), strongly suggests that Congress did not intend the Attorney General actions under that provision to be subject to judicial review. Section 5 requires covered jurisdictions to delay implementation of validly enacted state legislation until federal authorities have had an opportunity to determine whether that legislation conforms to the Constitution and to the provisions of the Voting Rights Act.

432 U.S. at 501-02, 97 S.Ct. at 2419, 53 L.Ed.2d at 517.

The court examined and noted the intent of Congress to provide covered jurisdictions with an expeditious alternative to declaratory judgment actions, "[t]he congressional

intent is plain: The extraordinary remedy of postponing the implementation of validly enacted state legislation was to come to an end when the Attorney General failed to interpose a timely objection based on a complete submission." 432 U.S. at 504, 97 S.Ct. at 2420, 53 L.Ed.2d at 518. The court concluded, "[W]e hold that the objection interposed by the Attorney General to § 2 of Act 1205 on July 20, 1973, *nunc pro tunc*, is invalid. South Carolina is therefore free to implement its reapportionment plan for the State Senate." 432 U.S. at 507, 97 S.Ct. at 2422, 53 L.Ed.2d at 520.

Consistent with *Morris v. Gressette*, we find that the U.S. Attorney General *precleared* the entire 1986 act when he failed to interpose any objection to the July 22, 1986, submission; therefore, any subsequent objection to a portion of that act is invalid and the 1986 act was effective from the date of preclearance.

Woods v. Hamilton, 473 F.Supp. 641 (D.C.S.1979) was an action to enjoin the enforcement of ordinances implementing home rule in Charleston County, South Carolina. The South Carolina 1975 Home Rule Act had been *precleared* by the U.S. Attorney General. By letter to the Attorney General of South Carolina, the U.S. Attorney did not object to the holding of a referendum on the question of the form of government of each county and city in the state, while attempting to reserve the right to object to the implementation in individual counties of the several forms of government. Finding the decision in *Morris v. Gressette* controlling, the district court characterized the U.S. Attorney's tardy decision to interpose an objection as a belated attempt to label the implementation of the changes as an "uncleared change."

We find here, as the South Carolina court did in *Woods v. Hamilton*, that the U.S. Attorney General is belatedly attempting to reconsider his earlier *preclearance* by labeling that which he wishes to reconsider as "uncleared".

Here, as in South Carolina, the state Attorney General submitted the entire act for consideration. Here, as in *Woods v. Hamilton*, the U.S. Attorney is not entitled to a "second bite" at the Mississippi Education Reform Act of 1986.

C.

Recent Mississippi cases have dealt with the impact of municipal annexations on adjacent county school districts. *In Re City of Booneville, Prentiss Cty.*, 551 So.2d 890 (Miss.1989); *Harrison County v. City of Gulfport*, 557 So.2d 780 (Miss.1990); *Matter of Boundaries of Jackson*, 551 So.2d 861 (Miss.1989).

In *Harrison County* the primary issue was the standing of the Harrison County Board of Supervisors and the County Board of Education to contest the annexation of county territory by the City of Gulfport and the City of Biloxi, respectively. Nothing in this opinion should be interpreted to deny the standing of the Harrison County officials.

Booneville more directly addressed the status of the repeal of § 37-7-611. Assuming the statute had not been repealed, the loss of the territory annexed by the City of Booneville would devastate the Prentiss County School District. Objectors argued that the chancellor was obliged to and erred in not considering the impact of the annexation on the school districts due to the fact that § 37-7-611 had not been repealed. The court recognized that the issue of preclearance is a federal question, but noted the inconsistency in Mississippi law occasioned by the dispute over the presumably incomplete preclearance of the Education Reform Act, stating that the Prentiss County School District would not automatically lose the children in the annexation area due to the procedures established by Miss.Code Ann. § 37-7-103, *et seq.* The court concluded that these procedures, separate and apart from the stat-

utes governing annexation of territory by a municipality, precluded the alteration of the status quo of the Prentiss County School System.

Matter of Boundaries of Jackson, 551 So.2d 861 (Miss.1989) recognizes the limited authority of this court. Although we cannot grant *preclearance*, we can clearly recognize that it has been accomplished.

IV.

WAS THE AWARD OF EXPENSES AND ATTORNEY'S FEES TO WESTERN LINE PROPER?

Western Line prayed for attorney fees under Miss.R.Civ.P. 11. In defendant's "Memorandum Supporting Motion for Summary Judgment" the court is asked to impose sanctions under this rule, which provides for the imposition of expenses and attorneys' fees only if a party "files a motion or pleading which, in the opinion of the Court, is frivolous or is filed for the purpose of harassment or delay." Miss.R.Civ.P. 57 allows for declaratory relief in any "actual controversy that has not reached the stage at which either party may seek a coercive remedy."

A pleading is frivolous only when the pleader has no hope of success. *Tricon Metals & Servs., Inc. v. Topp*, 537 So.2d 1331, 1335 (Miss.1989). There was and is a very real dispute over the status of the school districts in this case. In light of the circuit court's own order which states that Mississippi law is unclear as a result of the dispute over *preclearance*, we cannot say that the pleading filed by Greenville is frivolous.[8] Finding the circuit court abused its discretion in imposing sanctions, we reverse on that

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[8] Although the action of Greenville School District in seeking declaratory relief was arguably premature due to the fact that preclearance of the annexation was not obtained until February 1990, the school district prudently sought this determination.

issue. *Nationwide Mut. Ins.Co. v. Evans*, 553 So.2d 1117, 1119 (Miss.1989).

Accordingly, we affirm as to the release and return of the escrowed funds and payment by the plaintiff of the costs of such refund, and reverse as to the payment of attorneys' fees and expenses of the defendant. We affirm as to maintaining the status quo of the two school districts, finding that they remained unchanged by the annexation.

AFFIRMED IN PART AND REVERSED IN PART.

ROY NOBLE LEE, C.J., HAWKINS and DAN M. LEE, P.JJ., PRATHER, ROBERTSON, SULLIVAN and ANDERSON JJ., concur.

PITTMAN, J., not participating.

APPENDIX B

Supreme Court of Mississippi
Linda Stone, Clerk
Third Floor Gartin Building
450 High Street
P.O. Box 249
Jackson, Mississippi 39205-0249

DEPUTY CLERKS
YVONNE BURNHAM
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TELEPHONE:
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March 6, 1991

Clell G. Ward
Attorney at Law
Box 575
Greenville MS 38701

John Perry Sansing
BRUNINI GRANTHAN
GROWER FIRM
P O Drawer 119
Jackson MS 39205

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 6th Day of March, 1991.

Supreme Court Case #07-CA-59534

Trial Court Case #11091

Greenville Public School District; Mary Haynes, Carolyn Morris, Ann Brent, Roy Campbell, III, and John Richards, in their official capacities as members of the Greenville Public School District Board of Trustees

vs.

Western Line Consolidated School District; Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr., and Martha Carroll, in their official capacities as members of the District Board of Education

Petition for Rehearing Denied. Pittman, Banks, and McRae, JJ., Not Participating

Motion of Western Line to Retax Costs Sustained and Greenville Public School District, et al. are taxed with all costs

Supreme Court Clerk

lwp

ccs: James Robertshaw
Giles W. Bryant

APPENDIX C

**IN THE CIRCUIT COURT OF
WASHINGTON COUNTY, MISSISSIPPI**

No. 11,091

GREENVILLE PUBLIC SCHOOL DISTRICT, et al.,
PLAINTIFFS,

VS.

WESTERN LINE CONSOLIDATED SCHOIOL DISTRICT, et al.,
DEFENDANTS.

FILED

88 MAY 5 AM 9 09

**NANCY WHITE REED
CIRCUIT CLERK**

BY /s/ S. Ross D.C.

ORDER GRANTING RELIEF

This cause coming on to be heard on defendants' Motion for Summary Judgment on facts admitted or otherwise stated in the pleadings, stipulated to be correct, and on additional documentary evidence adduced on said hearing, and the Court, being fully advised as to the law and the facts, doth ORDER AND ADJUDGE:

1. As a result of letters on behalf of plaintiffs, the Tax Collector of Washington County, has been forced to escrow current tax collections on motor vehicles and mobile homes to avoid exposure to liability for failure to collect school

taxes at the higher rate levied by plaintiffs or for wrongfully disbursing funds to defendants. As a result these funds, which have been budgeted by defendants for current school expenses, have been wrongfully and unlawfully withheld from defendants. Plaintiffs are ordered and directed to take such action as may be necessary for immediate release of these funds, and are further ordered and directed to reimburse the Tax Collector for reasonable and necessary expenses incurred in making refunds to taxpayers who have paid at the higher rate, as subsequently directed.

2. Failure of the Attorney General of the United States to object or not object to repeal of §37-7-611, Mississippi Code of 1972, by §47, Chapter 492, Laws of 1986, has left Mississippi statutes applicable to the issues presented in this litigation unclear. Exclusive jurisdiction of matters within the ambit of the Voting Rights of 1965 is vested in the United States District Court for the District of Columbia and/or the Attorney General of the United States, and this Court has no jurisdiction to rule in these areas. Accordingly, an ultimate decision is withheld pending definitive rulings by the Supreme Court of Mississippi or the Attorney General of the United States.

3. In the interim, defendants need relief. Under §37-9-105, Mississippi Code of 1972, defendants are required to notify any teachers not to be tendered contracts for the 1988-89 school year no later than April 8, 1988. Under the uncertainty created by this action, defendants cannot do this and will be irreparably harmed by loss of good teachers who may accept other employment. In addition, parents and pupils should at the very least know which schools will be attended during the coming school year. Accordingly, it is further ordered that:

a. All pupils residing in areas of Western Line Consolidated School District included within the December 9, 1987, annexation by the City of Greenville, will attend

Western Line Schools to which they are presently assigned for the school year 1988-89; and,

b. Western Line will continue to levy and collect school taxes on property within such areas for the current fiscal year and for the fiscal year ending June 30, 1989.

4. It is further ordered that plaintiffs pay defendants the reasonable and necessary expenses, including reasonable attorney fees, incurred in defense of this action.

5. Either party may have an appeal without supersedeas from this order under §11-5-7, Mississippi Code of 1972, to settle the principles of this case, application therefor to be made within thirty (30) days of the date of this Order. In the event of any appeal, the parties are directed to prepare a Stipulation of Facts from the record in this case, which shall include materials presented to the Court during argument, it having been represented to this Court there is no disagreement as to material facts.

ORDERED AND ADJUDGED this 22nd day of March, 1988.

/s/ Arthur B. Clark
Circuit Judge

APPROVED AS TO FORM:

McLEMORE & WARD
BRUNINI, GRANTHAM, GROWER & HEWES

By _____
Attorneys for Plaintiffs

ROBERTSHAW, TERNEY, NOBLE & SMITH

By /s/ J. Robertshaw
Attorneys for Defendants

APPENDIX D

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI

CAUSE NO. 11,091

GREENVILLE PUBLIC SCHOOL DISTRICT; Mary Haynes, Carolyn Morris, Ann Brent, Roy Campbell, III, and John Richards, in their official capacities as members of the Greenville Public School District Board of Trustees

PLAINTIFFS

VS.

WESTERN LINE CONSOLIDATED SCHOOL DISTRICT OF WASHINGTON AND ISSAQUENA COUNTIES, MISSISSIPPI; Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr. and Martha Carroll, in their official capacities as members of the District's Board of Trustees

DEFENDANTS

FILED

16 Day of Feb 19 88

Nancy White Reed
Circuit Clerk

By /s/ P. Sherman D.C.

AMENDED COMPLAINT

Greenville Public School District, Mary Haynes, Carolyn Morris, Ann Brent, Roy Campbell, III, and John Richards file this Amended Complaint pursuant to Rule 57 of the Mississippi Rules of Civil Procedure against Western Line

Consolidated School District of Washington and Issaquena Counties, Mississippi, and the Board of Trustees of Western Line, Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr. and Martha Carroll, in their official capacity, requesting the declaratory relief described herein and, in support thereof, would show the following:

PARTIES

1. Greenville Public School District is a political subdivision of the State of Mississippi and is located in Greenville, Mississippi.

2. Mary Haynes is a resident citizen of Greenville, Mississippi. Ms. Haynes is a member of the Board of Trustees of the Greenville School District.

3. Carolyn Morris is a resident citizen of Greenville, Mississippi. Ms. Morris is a member of the Board of Trustees of the Greenville School District.

4. Roy Campbell, III is a resident citizen of Greenville, Mississippi. Mr. Campbell is a member of the Board of Trustees of the Greenville School District.

5. John Richards is a resident citizen of Greenville, Mississippi. Mr. Richards is a member of the Board of Trustees of the Greenville School District.

6. Defendant Western Line is a political subdivision of the State of Mississippi; Ruby Slade, Dot Gilder, Tootie Trotter, Clarence Hall, Jr. and Martha Carroll, are elected members of the Board of Trustees of the Western Line Consolidated School District of Washington and Issaquena Counties, Mississippi.

FACTS

7. On August 3, 1982, the City of Greenville, Mississippi petitioned the Chancery Court of Washington County, Mississippi seeking to annex approximately 19 square miles

of territory to the then existing corporate limits of the municipality. Several individual businesses and a portion of the Western Line Consolidated School District were located in the area the City was seeking to annex. Those businessmen objected to and opposed the proposed annexation in the Chancery Court of Washington County and before the Mississippi Supreme Court on appeal. The Supreme Court allowed the city to annex a portion of the desired territory on September 30, 1987. A final decree, annexing approximately 14 miles, was signed by Chancellor Nat Bullard on December 9, 1987. A copy of the decree is attached hereto as Exhibit A.

8. During the 1986 session of the Mississippi Legislature, the Legislature enacted the Uniform School Law, Chapter 492, Laws of Mississippi, 1986 Regular Session. Section 47 of the Uniform School Law repealed Section 37-7-611 of the Mississippi Code of 1972, which provided that any territory annexed to a municipality would automatically become a part of the municipal school district. However, Section 47 of the Uniform School Law was not designated in the original submission for preclearance by the Attorney General of the United States. The Attorney General of Mississippi submitted Section 47 to the Attorney General of the United States on December 29, 1987.

9. Plaintiff contends the repeal of Section 37-7-611 is void and of no effect until it has been precleared by the Attorney General of the United States. Accordingly, Section 37-7-611 is the law in Mississippi and, until Section 47 is precleared, controls the effect of a municipal annexation on county school district boundaries in the State of Mississippi. Attached hereto as Exhibit B is a copy of the submission of Section 47 of the Uniform School Law by the Attorney General of Mississippi. The 60-day period for review by the Attorney General of the United States will expire on February 29, 1988.

EXISTING CONTROVERSY

10. The Defendant contends Section 37-7-611 is inapplicable to this controversy, notwithstanding the failure of the State of Mississippi to preclear the repealer. The Defendant further contends that Section 37-7-103 of the Mississippi Code of 1972, as amended, provides the exclusive method by which school districts can alter district boundaries. Section 37-7-103 is inapplicable to this controversy. That Section was amended by Section 52 of the Uniform School Law, effective July 1, 1987. In keeping with the overall objective of the Uniform School Law, Section 52 contains conforming language that is generic in its application to school districts in the State. The amending language in Section 52 does not create a conflict with Section 37-7-611. To the contrary, Section 37-7-103 simply provides a means of reorganizing, altering or otherwise changing the boundaries of a school district by consent. Section 37-7-103 has been precleared by the United States Justice Department pursuant to the Voting Rights Act. The Defendant further contends the Washington County Tax Collector and Assessor have no authority to collect City school taxes from residents within the newly annexed territory. Since Section 47 of the Uniform School Law has not been precleared, Section 37-7-611 mandates that the residents of the newly annexed territory automatically become residents of the municipal school district and, accordingly, are subject to the City school taxes.

REQUESTED RELIEF

11. For the reasons set forth above, the Greenville Public School District and the individual members of the Board of Trustees of the Greenville School District request this Court to order a speedy hearing of this action and to enter judgment pursuant to Rule 57 of the Mississippi Rules of Civil Procedure and declare the following:

a. The repeal of Section 37-7-611 of the Mississippi Code of 1972 by Section 47 of the Uniform School Law is void and of no effect until it has been precleared by the Attorney General of the United States.

b. Section 37-7-103 of the Mississippi Code of 1972, as amended, is not in conflict with Section 37-7-611.

c. Plaintiff's request that the Defendant be ordered to pay all costs of this litigation, including attorneys fees, and request such other and further relief as this Court deems appropriate.

This the 15 day of February, 1988.

Respectfully submitted,

GREENVILLE PUBLIC SCHOOL DISTRICT and MARY HAYNES, CAROLYN MORRIS, ANN BRENT, ROY CAMPBELL, III, and JOHN RICHARDS

By Their Attorneys,
MCLEMORE & WARD
BRUNINI, GRANTHAM, GROWER & HEWES

BY: /s/ Clell G. Ward
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APPENDIX E

STATE OF MISSISSIPPI
[SEAL]
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EDWIN LLOYD PITTMAN
ATTORNEY GENERAL

ROBERT M. ARENTSON
Deputy Attorney General

STEPHEN J. KIRCHMAYR
Deputy Attorney General

July 22, 1986

Honorable William Bradford Reynolds
Assistant Attorney General
Civil Rights Division
United States Department of Justice
HOLC Building Room 920
320 First Street, N. W.
Washington, D. C. 20534

Re: Submission of Senate Bill Number 2117, Chapter Number 492, Laws of Mississippi, 1986 Regular Session, An Act Creating the Mississippi Uniform School Law of 1986

(Expedited Consideration Requested)

Dear Mr. Reynolds:

Please find enclosed herein the above referred legislation submitted pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973(c), to the Attorney General of the United States.

Expedited consideration of this submission will be greatly appreciated.

Very Truly yours,

/s/ Edwin Lloyd Pittman
Edwin Lloyd Pittman
Attorney General

/jw
enclosure

SUBMISSION UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965 AS AMENDED, 42 U.S.C. § 1973

TO: The Attorney General of the
United States of America
The Honorable Edwin Meese, III

SUBMISSION OF SENATE BILL NUMBER 2117, CHAPTER 492, LAWS OF MISSISSIPPI, 1986 REGULAR SESSION, AN ACT CREATING THE MISSISSIPPI UNIFORM SCHOOL LAW OF 1986

EXPEDITED CONSIDERATION REQUESTED

Pursuant to Section 5 of the Voting Rights Act of 1965, as amended and extended, 42 U.S.C. § 1973(c) (hereinafter referred to as Section 5), and the United States Department of Justice's Procedures for the administration of Section 5 of the Voting Rights Act of 1965, as amended, 28 C.F.R. §§ 51.1 *et seq.* (1984), the State of Mississippi, by and through the Attorney General of the State of Mississippi, Edwin Lloyd Pittman, respectfully submits to the Attorney General of the United States, Senate Bill number 2117, Chapter Number 492, Laws of Mississippi, 1986 Regular Session, (hereinafter referred to as Senate Bill Number 2117), which is an act creating the Mississippi Uniform School Law of 1986. In making this submission, the State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether Senate Bill 2117 is subject to the preclearance requirements of Section 5. For this submission, the State of Mississippi respectfully states as follows:

28 C.F.R. §§ 51.25(a).

The Attorney General of the State of Mississippi submits for preclearance under Section 5, a certified copy of Senate Bill Number 2117, Chapter Number 492, Laws of Mississippi, 1986 Regular Session, an act creating the Mississippi Uniform School Law of 1986, attached as Exhibit "A". A

copy of the final passage of roll call votes on Senate Bill number 2117 of the Senate and the House of Representatives is attached as Exhibit "B". Also enclosed as Exhibit "C" is a looseleaf booklet entitled "Senate Bill Number 2117—Comparison of Current Law and New Law" which merely sets forth each section of the current law followed by each applicable section of Senate Bill Number 2117 for explanatory purposes.

28 C.F.R. § 51.25(b).

This submission is cited as the "Mississippi Uniform School Law of 1986" and is submitted to the Attorney General of the United States in its entirety. The act accomplishes a reorganization and streamlining of laws which govern the operation, financing, and administration of the public schools in Mississippi. Senate Bill number 2117 is reform legislation supplemental to and a logical extension of the Education Reform Act of 1982, adopted by the Mississippi Legislature in 1982. The Education Reform Act mandated public kindergartens statewide, revised teacher and administrator certification requirements, mandated performance based school accreditation and required attendance of administrators in school management institutes, among many other provisions. For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review.

Section 9 amends Section 37-7-301 of the Mississippi Code Annotated (Supplement 1985) and sets out new law in subparagraphs (w)(i) and (w)(ii) for the authority of school boards to lease a school building. Procedurally, the school board will be required to publish notice of the resolution adopted by the school board to lease the building for three (3) consecutive weeks with the first publication being at least thirty (30) days prior to the date of action by the school board on the lease. If no petition requesting an election is filed prior to such meeting, then the school

board may proceed to lease a school building. However, if a petition is filed with the school board prior to the meeting and is signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified voters of the school district involved, then an election shall be held on the question of authorizing the school board to lease a school building. If at least three-fifths ($^3/_5$) of the qualified electors of the school district vote in favor of the leasing of a school building, then the school board shall proceed to lease a school building. There are two versions of the Amended Section 37-7-301 of the Mississippi Code Annotated (Supplement 1985) presented in Section 9 with the first version effective as of April 15, 1986 and the second version effective as of July 1, 1987. The above described election feature in the new leasing language is identical in both versions.

Section 25 amends Section 37-7-409 of the Mississippi Code of 1972. Subsection (3) authorizes the levy of millage to fund the construction of a school building or facility constructed jointly with another school district. Such joint construction is authorized by Subsections (1) and (2). The present law requires publication of the resolution of intent to make the levy adopted by the school board in a newspaper having general circulation in the county. If a petition is filed by twenty percent (20%) of the qualified electors of the county then an election shall be held on the question of levying the millage. There must be approval of the levy by a majority of the qualified electors of the county before the millage is levied. The amendment contained in Subsection (3) of Section 25 sets forth that the resolution of intent is to be published in a newspaper having general circulation in the school district rather than the county and that if a petition is filed, it must be signed by the lesser of fifteen hundred (1500) or twenty percent (20%) of the qualified voters of the school district, rather than the county, in order to call an election. If three-fifths ($^3/_5$) of the qualified electors of the school district, rather

than a majority of the county, vote to approve the levying of the additional taxes, then the levy shall be made within the manner, form and time required by law.

Section 52 amends Section 37-7-103 of the Mississippi Code of 1972. Section 52 sets forth that after July 1, 1987, the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such district. Additionally, the school board with the consent of the school board of the district involved may add to such school district any part of the school district adjoining same or may detach territory from such school district and annex same to an adjoining district. The present law enables the county board of education to create, alter or abolish any school districts of such county, other than the municipal separate school districts. In addition, the county board of education with the consent of the board of trustees of the municipal separate school district involved may add to such municipal separate school districts any part of the county adjoining same or may detach territory from such municipal separate school district and annex same to an adjoining district in the county school system.

Section 53 amends Section 37-7-105 of the Mississippi Code of 1972. This section provides that when a school board abolishes, alters or reorganizes a school district without a petition, a publication of such order must be published in a newspaper having general circulation in such district(s). If no newspaper of such circulation is published in the school district then the order shall be posted in three (3) public places in the school district. If no petition is filed, said order shall become final. However, if a petition signed by twenty percent (20%) of the qualified voters of any school district reorganized, altered or abolished is filed with the school board then an election shall be held on the question of whether or not such district or districts shall be reorganized, altered or abolished. If a majority shall approve the order of the school board then such order

shall become final. There is very little change from the present law to the amended version. The only changes are the allowance of the reorganization of a school board as opposed to the county board of education.

Section 54 amends Section 37-7-107 of the Mississippi Code of 1972 and provides that if a petition signed by two-thirds ($^2/_3$) of the qualified electors of an existing school district is filed with the school board requesting such district be abolished then the school board shall enter an order abolishing such school district. The order shall become final on a date fixed by the school board not later than July 1 next succeeding the date of such order. The only significant change is that the present law used the terminology of county board of education as opposed to school board.

Section 55 amends Section 37-7-109 of the Mississippi Code of 1972 by setting forth that if a petition signed by a majority of the qualified electors filed with the school board requesting that said described territory be taken from such existing district and annexed to an adjacent district, or reorganized into a new school district, then the school board with the approval of the school board of the district to which such territory is to be annexed shall have the power and authority to take such territory from the existing district and annex same to the adjacent district, or to create a new school district of such specifically described territory. The remainder of Section 55 is the existing language in Section 37-7-109 with the exception that the term school board is used in place of county board of education.

Section 56 amends Section 37-7-111 of the Mississippi Code of 1972. This section sets forth that when any school district is abolished or altered under the provisions of the act, the abolition or alteration shall not impair or release the property of such school district from liability for the payment of the bonds or other indebtedness of such district

and it is the duty of the board of supervisors to levy taxes on the property of the district abolished or altered from year to year until the indebtedness is fully paid. The only change in that particular section is the inclusion of the terminology altered and alteration.

Section 153 amends Section 37-41-95 of the Mississippi Code Annotated (Supplement 1985) which sets forth certain requirements as to the manner of issuance and form of bonds for school buses and transportation equipment. Present law provides that these bonds shall be issued by either the governing authorities of the county or the municipality depending upon the location of the school district and shall be issued in accordance with Sections 19-9-1 through 19-9-31 or Sections 21-33-301 through 21-33-329 governing issuance of general obligation bonds of the county or city. Other sections of Senate Bill Number 2117 transfer authority for issuing all school bonds from the county or city to the school district. To reflect this change in authority for the issuance of school bonds, Section 37-41-95 is amended by Section 153 to provide that these transportation bonds shall be issued in accordance with Sections 37-59-1 through 37-59-45 of the Mississippi Code Annotated which are the statutes governing issuance of general obligation school bonds. Section 37-59-17 is amended by Section 173 of Senate Bill Number 2117, however, the three-fifths ($^3/_5$) of the qualified electors approval provision is unchanged, therefore, the three-fifths ($^3/_5$) of the qualified electors provision in Section 153 is included for explanatory purposes.

Section 163 amends Section 37-57-105 of the Mississippi Code Annotated (Supplement 1985) which authorizes levy of taxes for the support of the respective school districts. Present law establishes that municipal districts present their funding need to the municipal governing authorities and the authorities shall levy sufficient millage, wherein, county districts present their funding need to the county governing authorities and the authorities may levy suffi-

cient millage. Section 163 amends in pertinent part those provisions relating to the levying authority for the school district by providing that the district shall levy sufficient millage. If the ad valorem tax effort in dollars requested by the school district for the fiscal year exceeds the next preceding fiscal year's ad valorem tax effort in dollars by more than seven percent (7%) but not more than ten percent (10%) then the school board must publish notice for three (3) consecutive weeks in the newspaper in the school district. Further, an election must be held on the amount of the increase in excess of seven percent (7%) but not more than ten percent (10%) if a petition is filed and signed by the lesser number of twenty percent (20%) or fifteen hundred (1500) of the qualified electors of the school district. If a majority of the electors vote in favor of the question then the stated increase requested by the school board shall be approved.

Section 164 amends Section 37-57-107 of the Mississippi Code Annotated (Supplement 1985) which provides that the aggregate receipts from taxes levied for school district purposes shall not exceed the aggregate receipts from those sources during the next preceding fiscal year plus an increase not to exceed ten percent (10%). Section 57-7-107 authorizes tax revenue to exceed ten percent (10%) if an election is held in the school district and a majority of the electors of the district actually vote and if a majority of those voting in the election and approve the increase. Section 164 amends this vote requirement to establish the required vote to be three-fifths ($^3/_5$) of those voting in the election as opposed to the majority of those voting if a majority of the registered voters actually vote.

Section 170 amends Section 37-59-11 of the Mississippi Code of 1972 which sets forth the procedure for the calling of an election on the issuance of bonds. Presently, Section 37-59-11 mandates an election of the question of the issuance of the bonds. The version of Section 170 which is effective until June 30, 1987 mandates an election only if

a petition is filed with the school board calling for an election and is signed by the lesser of fifteen hundred (1500) or twenty percent (20%) of the registered voters of the school district. The version of Section 107 effective after July 1, 1987 reinstates the mandatory election prior to the issuance of school bonds.

Section 185 amends Section 37-59-105 of the Mississippi Code of 1972. Present law authorizes the borrowing of money and the issuance of negotiable notes or certificates of indebtedness and sets forth that an election on the question of incurring such indebtedness shall be held if a petition of twenty percent (20%) of the electors of the school district is filed. If a majority of the electors vote in favor of incurring such indebtedness then the governing authorities shall proceed to issue negotiable notes or certificates of indebtedness. Section 185 amends Section 37-59-105, in pertinent part, to change the required vote to three-fifths ($^3/_5$) of the qualified electors voting in said election.

Section 203 is new law which mandates an election in certain school districts at the November, 1988 general election. Section 203 requires the county governing authorities in any county wherein the position of county superintendent of education remains elective as of July 1, 1986, to publish notice of the election for three (3) consecutive weeks and to hold an election at the general election in November, 1988, on the sole question of whether the superintendent shall remain an elected office or shall be abolished. Present law allows the superintendent of schools to be elected in districts under the designation of county school districts.

28 C.F.R. § 51.25(c).

The person making this submission is Edwin Lloyd Pittman, the Attorney General of the State of Mississippi and the Chief Legal Officer for the State of Mississippi, whose address is Post Office Box 220, Jackson, Mississippi 39205,

and whose telephone number is (601) 359-3680. Lynn Fitch Mitchell, Special Assistant Attorney General, with Attorney General Pittman's staff, should be contacted concerning this submission.

18 C.F.R. § 51.25(d).

The name of the submitting authority and the jurisdiction responsible for the enactment of the statutes under submission is the State of Mississippi.

28 C.F.R. § 51.25(e)

Not applicable.

28 C.F.R. § 51.25(f)

The Legislature of the State of Mississippi was responsible for enacting the statutes under submission.

28 C.F. § 51.25(g).

The legislative power of the State of Mississippi is vested in a legislature which shall consist of a senate and a house of representatives as set forth by Article 4, Section 33 of the Mississippi Constitution. Article 4, Section 59 of the Mississippi Constitution provides that bills may originate in either house and Article 4, Section 62 provides that no amendment to bills by one house shall be concurred in by the other except by a vote of the majority thereof. Article 4, Section 71 denotes that every bill introduced into the legislature shall have a title which clearly indicates the subject matter or matters of the proposed legislation. Further, Article 4, Section 72, sets out that every bill which passes both houses shall be presented to the Governor for his signature; but if he does not approve such bill, he shall return it, with his objections, at which point, both houses shall reconsider such bill and upon a two-thirds ($^2/_3$) vote of each house, it shall become a law.

28 C.F.R. § 51.25(h).

Senate Bill Number 2117 was approved on April 15, 1986.

28 C.F.R. § 51.25(i).

The entire act set forth by Senate Bill Number 2117 shall be in effect after July 1, 1987 as denoted by Section 205. This section further provides that Sections 9, 70, 76, 170, 186 and 188 of the act shall take effect after passage and that Sections 162, 163, 164 and 202 of the act shall take effect after July 1, 1986. This section also provides that Section 203 of the act shall take effect after it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

28 C.F.R. § 51.25(j).

The Attorney General of Mississippi cannot state that Senate Bill Number 2117 under submission has not yet been enforced or administered because particular sections of such bill are authorized effective as of July 1, 1986. The Attorney General can state that the sections denoted under Senate Bill Number 2117 which are to be effectuated at a later date or upon preclearance from the United States Department of Justice under Section 5 of the Voting Rights Act of 1965, as amended and extended, have not yet been enforced or administered.

28 C.F.R. § 51.25(k).

Senate Bill Number 2117 does affect the entire State of Mississippi.

28 C.F.R. § 51.25(l).

The changes set forth in Senate Bill Number 2117 were made as part of a comprehensive reorganization and restructuring of the laws governing the administration and operation of the public schools of Mississippi. Further, the act grants to the governing boards of the school districts a measure of fiscal independence to meet the funding needs of each respective district. Mississippi schools currently operate under four different kinds of school district with each district having its own system of government and

finance. It appears that if there were only one type d district so that all laws pertaining to districts would appl to each district in the state, rather than special laws fo special types of districts, the administration and operatio of school districts would be more effective and benefici to the state.

The act in the entirety with special emphasis placed o the denoted sections establishes no changes in qualifica tions or registration for voting, procedures for voting ab sentee ballots, district lines, precincts or polling place The particular sections with the exception of Section 20 speak primarily to the publication requirements of notic of intent of action of the school board, the procedure fo filing a petition, the required number of signatures on th petition to call an election, the number of qualified voter necessary to approve or disapprove action of the schoo board and the procedure to reorganize or abolish a schoo district.

Section 203 is new law which mandates an election i school districts in November, 1988, concurrent with th general elections in that year. The election is to be hel on the sole question of whether the superintendent sha remain an elected office or whether the elected positio shall be abolished and the superintendent shall be ap pointed by the school board. There is no indication of th number of school districts that will vote to abolish th office of superintendent as an elected position and requir the office to be filled by appointment. When a majorit of qualified electors vote to abolish such office, the abo ishment is to be effective at the end of the regular ter of office or whenever a vacancy shall occur in the offic

It would appear that the intention of the legislature wa to provide the electors adequate time to consider the re erendum and thus make a decision of whether to have a elected superintendent or an appointed superintenden Section 203 seems to provide, although somewhat un

clearly, that if the qualified electors vote to abolish the elected office of superintendent then that position is to become an appointed position. Section 203 deals directly with Section 60 of Senate Bill Number 2117 which provides that each school district shall have a superintendent of schools selected in the manner provided by law. Accordingly, the implication is that a superintendent shall be either as an elected official or as an appointed official. Thus, the apparent intention of the legislature is to provide the electors with an opportunity to vote on the issue of whether to have an elected or an appointed superintendent and then implement the chosen position.

28 C.F.R. § 51.25(m).

Senate Bill Number 2117 did not and will not adversely affect racial or language minority groups, did not and will not effect members of racial or language minority groups and does not and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

28 C.F.R. § 51.25(N).

Not applicable.

28 C.F.R. § 51.25(O).

Senate Bill Number 2117, the comprehensive set of statutes creating the Mississippi Uniform School Law of 1986, under submission has not yet been precleared by the United States Department of Justice.

28 C.F.R. § 51.25(p).

This submission does not concern a redistricting, annexation or other complex change; therefore, no further information is supplied as supplemental contents suggested by C.F.R. § 51.26.

Pursuant to 28 C.F.R. § 51.32, the State of Mississi
respectfully requests that this submission be given *ex*
dited consideration.

If the Attorney General of the United States needs
further information concerning this submission, the St
of Mississippi will attempt to supply it.

This, the 22 day of July, 1986

Respectfully submitted,

STATE OF MISSISSIPPI

BY: /s/ Edwin Lloyd Pittman
EDWIN LLOYD PITTMAN, ATTORNEY GENER
STATE OF MISSISSIPPI

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for the State of Mississippi

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APPENDIX F

SENATE BILL NUMBER 2117—COMPARISON OF CURRENT AND NEW LAW

INTRODUCTORY NOTE

This booklet sets forth on a section by section basis each section of the current law which has been amended followed by each individual section of Senate Bill Number 2117, Laws of Mississippi, 1986 Regular Session. Where the sections of Senate Bill Number 2117 are new law then only those particular sections will be denoted with no comparison of current law. This section by section comparison provides explanatory materials adequate to disclose the difference between the prior and the proposed law. Each section of Senate Bill Number 2117 which is the version of the bill as sent to the governor is marked to show the changes made in the current law. Underlining indicates language added and a check mark indicates language deleted. By comparing each section of Senate Bill Number 2117 and the current practice, the changes to current law are easily identified.

§ 37-7-301. Powers and duties of boards of trustees.

The boards of trustees of school districts shall have the following powers, authority, and duties in addition to all others imposed or granted by law, to wit:

(a) To organize the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school. In the event the board of trustees provides for a high school of six grades, the lower division thereof may be designated as the junior high school and the higher division thereof may be designated as the senior high school, all in the discretion of the board of trustees;

SECTION 9. Section 37-7-301, Mississippi Code of 19
is amended as follows:

(Through June 30, 1987, this section shall read as
lows:)

37-7-301. The boards of trustees of school districts s
have the following powers, authority, and duties in a
tion to all others imposed or granted by law, to wit:

(a) To organize the schools of the district and to m
such division between the high school grades and elem
tary grades as, in their judgment, will serve the best
terests of the school. In the event the board of trust
provides for a high school of six grades, the lower divis
thereof may be designated as the junior high school
the higher division thereof may be designated as the se
high school, all in the discretion of the board of trust

(b) To introduce public school music, drawing, manual training, and other special subjects into either the elementary or high school grades, as the board of trustees shall deem proper;

(c) To be the custodians of the school property and to manage, control, and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing, and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or expel a pupil for misconduct in the school, upon school buses, on the road to and from school, during recess or upon the school playgrounds;

(b) To introduce public school music, drawing, manual training, and other special subjects into either the elementary or high school grades, as the board of trustees shall deem proper;

(c) To be the custodians of the school property and to manage, control, and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing, and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or expel a pupil for misconduct in the school, upon school buses, on the road to and from school, during recess or upon the school playgrounds;

(f) To visit each school in the district in a body at least once during the session for the purpose of determining what can be done for the improvement of the school in a general way;

(g) To assist the superintendent, principal, and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools, children of filthy or vicious habits, and children suffering from contagious or infectious diseases;

(i) To require, upon the recommendation of the state board of health, and the county health officer in whose health jurisdiction the school rests, the vaccination of school children against smallpox, typhoid fever, poliomyelitis or other contagious or infectious diseases and to require chest X-rays as soon as practicable, and to exclude from the schools children who have not been so vaccinated, as soon as practicable. However, the provisions hereof shall not apply to children whose parents or guardians are certified by an officer of their church to be bona fide members of a recognized denomination whose religious teachings require reliance on prayer or spiritual means for healing. It is further provided that no child shall be required to submit to any vaccination where the parent has caused to be filed with the board of trustees a certificate of a physician that such vaccination would be dangerous to the health or safety of such child;

(f) To visit each school in the district in a bod least once during the session for the purpose of d mining what can be done for the improvement of the s in a general way;

(g) To assist the superintendent, principal, and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools, children of filthy or vicious habits, and children suffering from contagious or infectious diseases;

(i) To require those vaccinations specified by the State Health Officer as provided in Section 41-23-37, Mississippi Code of 1972;

IV(B).

SECTION 47 OF CHAPTER 492 (1986) INSOFAR AS IT REPEALS SECTION 37-7-611, MISSISSIPPI CODE OF 1972 HAS NEITHER THE PURPOSE NOR THE EFFECT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE

(THE PURPOSE)

In the state's submission of the repeal of Section 37-7-611, as well as in the response to the request for additional information, the state described the purpose behind the repeal as part of an overall purpose underlying Chapter 492 of placing all school districts on an equal footing by granting to all districts the same prerogatives, powers, duties, and privileges as provided in this act.

Apparently, the statements in our submission that the repeal of Section 37-7-611 was subject to little legislative debate and was considered a housekeeping measure have been misinterpreted as minimizing the educational importance of the repeal of Section 37-7-611. As set forth in our submission and our subsequent response to the request for additional information, the repeal of Section 37-7-611 was considered essential to effectuating the purpose of Chapter 492. The **"Report of the Senate Interim Committee to Study Public School Finance and Administration in Mississippi"**, as set forth in our earlier response, stated in part:

> Several types of districts in existence today are still serving well but there are flaws in each. It appears that if there were only one type of district so that all of the laws pertaining to districts would apply to each district in the state, rather than special laws for special types of districts, the administration and operation of school districts would be more effective and beneficial to the state.

If the Attorney General's objection to the repeal of Section 37-7-611 is ultimately interpreted as requiring the automatic acquisition of territory, students and personnel of adjacent county or consolidated school districts by municipal separate school districts involved in municipal annexations, then the Attorney General's objection, under the guise of protecting unaffected minority voting rights, totally frustrates the above educational purpose.

It should be pointed out that in view of *Prentiss County Annexation Committee v. City of Booneville*, 551 So.2d 890 (Miss. 1989) and *Dotson v. City of Indianola*, 514 F.Supp. 397 (N. D. Miss. 1981) and the language of 42 U.S.C. §1973c, the sole effect of the Attorney General's objection could be limited to precluding the participation of newly annexed voters in municipal elections if such voters reside within the boundaries of an adjacent county or consolidated school district. As set forth in a proposed law review article entitled "Impact of the Voting Rights Act of 1965 Upon the Uniform School Law of 1986" by J. Robertshaw, a copy of which is attached hereto as Appendix "F", the Attorney General's objection to the repeal of Section 37-7-611 could be interpreted as not affecting where school age children attend school and which school district will levy and receive school taxes. Quoting directly from the proposed article at page 11:

> Thus, the sole remedy for failure to obtain preclearance is a ban on enforcement of any "qualification, prerequisite, standard, practice or procedure **with respect to voting.**" In **Dotson,** there being no "de-annexation", residents of the un-precleared annexations were not allowed to vote or run for municipal services. Here, there is a possibility residents of the annexed portion of PCSD may not vote for aldermen or councilmen, whichever, but whatever the AGUS does they will continue to pay school taxes to PCSD, and PCSD will continue to educate pupils from

> that territory. This is the **substantive** effect of repealing § 37-7-611, totally unrelated to any "qualification, prerequisite, standard, practice or procedure with respect to voting."

By submitting this request for reconsideration of the Attorney General's objection to the repeal of Section 37-7-611, the State of Mississippi does not waive its right to argue that the effect of the objection is limited to the voting concerns only and does not extend to the issue of where children will attend school nor to the issue of which school district will levy and receive taxes.

1. The Affidavit of Senator Irb Benjamin.

In support of this request for reconsideration, the State of Mississippi submits that consideration be given to the matters contained in the attached affidavit of Senator Irb Benjamin, Chairman of the Senate Education Committee of the Mississippi Legislature. As set forth in this affidavit, the clear purpose of the repeal of Section 37-7-611 was to protect the ad valorem tax base available to county school systems in the path of municipal expansion. As Senator Benjamin states, there was considerable evidence prior to the enactment of Chapter 492 that educational opportunities available to students residing in rural areas of our state were substandard to those offered to students residing in urban areas. This affidavit is attached as Appendix "G".

2. The 1986 Annual Report of the State Superintendent of Public Education (Section VII).

Additional support of this legislative finding is found in the 1986 Annual Report of the State Superintendent of Public Education, a copy of Section VII (pages 143-153) of which is attached hereto as Appendix "H".

In the 1986 Annual Report of the State Superintendent of Public Education revenue and expenditure statistics were presented for the 1984-85 school year. According to

that report, there were 154 school districts in the State of Mississippi. Fifty-eight (58) of these were municipal separate school districts and the remaining ninety-six (96) were county school districts and consolidated school districts.

The superintendent's report at pages 150 through 153 ranks the school districts according to wealth per average pupil unit and ad valorem tax collected per average pupil unit. The school districts are listed first by county district or consolidated district, followed, where appropriate, by the municipal district(s) in that county.

For purposes here, the lower one-third in ad valorem tax collected per average pupil unit are listed in descending order:

1984 - 1985

SCHOOL DISTRICTS WITH LOWEST AD VALOREM TAX COLLECTED PER AVERAGE PUPIL UNIT

154 Nettleton Line Cons.
153 Neshoba County Dist.
152 Union County Dist.
151 North Tippah Cons.
150 Prentiss County Dist.
149 Oktibbeha County Dist.
148 Wilkinson County Dist.
147 Durant Mun. Separate
146 Alcorn County Dist.
145 Marshall County Dist.
144 Canton Mun. Separate
(128) Simpson County Dist.
(127) Water Valley Cons.
(126) Pontotoc County Dist.
(125) Holmes County Dist.
(124) Benton County Dist.
(123) Wayne County Dist.
(122) West Jasper Cons.
(121) Choctaw County Dist.
(120) Lee County Dist.
(119) South Tippah Cons.
(118) East Tallahatchie Cons.

143 Lauderdale County Dist.
142 Baldwyn Mun. Separate
141 Leake County Dist.
140 Monroe County Dist.
139 Newton County Dist.
138 Chickasaw County Dist.
137 Anguilla Line Cons.
136 Enterprise Cons.
135 Calhoun County Dist.
134 Pearl River County Dist.
133 George County Dist.
132 Scott County Dist.
131 Tate County Dist.
130 Greene County Dist.
129 Tishomingo County Dist.
(117) South Panola Cons.
(116) Iuka Mun. Separate
(115) Lafayette County Dist.
(114) Jefferson Davis County Dist.
(113) Lowndes County Dist.
(112) Webster County Dist.
(111) Lincoln County Dist.
(110) Richton Mun. Separate
(109) Walthall County Dist.
(108) Copiah County Dist.
(107) Sunflower County Dist.
(106) Jefferson County Dist.
(105) Noxubee County Dist.
(104) Marion County Dist.

Of the above fifty-one (51) school districts which during the 1984-1985 school year had the lowest ad valorem tax collected per average pupil unit, forty-six (46) were county school districts or consolidated districts. Only five (5) of these districts were municipal separate school districts. The repeal of Section 37-7-611 was considered vital to the protection of the ad valorem tax base of these county school districts and consolidated school districts.

THE EFFECT

The repeal of Section 37-7-611 and the amendment to Section 37-7-103 by Section 52 of Chapter 492 would have the effect of furthering the overall purpose of Chapter 492. Chapter 492, Section 52 was precleared under Section 5 on August 29, 1986. It amends Section 37-7-103 by providing as follows:

> "37-7-103 from and after July 1, 1987, the school board of any school district shall have full jurisdiction, power and authority, at any regular meeting thereof or at any special meeting called

> for that purpose to abolish such existing district, or to reorganize, change or alter the boundaries of any such district. In addition, thereto, with the consent of the school board of the school district involved, the school board may add to such school district any part of the school district adjoining same and with the consent of the school board of the school board of the school district involved, may attach territory from such school district and annex same to an adjoining district.

The purpose underlying Section 37-7-103 was to allow school districts to alter their boundaries in cooperation with adjoining districts without giving any one district the right to take territory, students and teachers from the other. This is an educational policy decision made by the Mississippi Legislature and it offends all notions of federal/state relations for the Attorney General to supplant the policy decisions of the state by vetoing this policy on non-existent voting concerns.

As the Department of Justice is fully aware from its experience with municipal annexations. One of the most frequent objections to municipal annexation is the disruption it causes to adjoining school districts. The reason for this disruption is Section 37-7-611.

3. Deposition of Jauney Lynn.

The Mississippi Association of Educators is very interested in the repeal of Section 37-7-611 due to its disruptive effect on schools, teachers, students and education in Mississippi. Attached hereto as Appendix "I" is a copy of a deposition of Jauney Lynn, the former Director of the Mississippi Association of Educators which illustrates some of the problems caused by the automatic extension of school boundaries resulting from municipal annexations. The MAE is an objector in the Gulfport, Mississippi annexation proceeding because of the disruptive effect of Section 37-7-611 on the adjacent school district.

4. Affidavit of Joseph A. Luesteck.

The requirements of Section 37-7-611 have also been problematic for municipalities in their expansion efforts. Mr. Joseph A. Leusteck a city planner who has testified as an expert witness for various municipalities in connection with municipal annexations describes in his affidavit the problems Section 37-7-611 causes municipalities and further demonstrates the fact that there is no logical relationship between the factors and considerations which support municipal expansions and those that support the expansion of school boundaries. In addition Mr. Luesteck's affidavit also describes the disruptive aspects of Section 37-7-611 on school districts. The affidavit of Joseph A. Luesteck is attached hereto as Appendix "J".

It is clear from the above that the real effect of the repeal of Section 37-7-611 is that increased educational opportunities can be given to students in county school districts, that municipal expansions can proceed uninhibited by factors which bear no real relationship to the issue of municipal expansions and that the disruptive effect that Section 37-7-611 has on schools, teachers, students and education in Mississippi will be removed.

IV(C)

THE EFFECT OF THE REPEAL OF SECTION 37-7-611 SET FORTH IN THE MARCH 31, 1989 OBJECTION LETTER IS BASED ON ERRONEOUS FACTUAL AND LEGAL CONCLUSIONS

The March 31, 1989 objection letter is predicated on the fact that in Mississippi municipalities are becoming increasingly black and that suburban and rural areas are becoming increasing white. This is incorrect. While these demographic trends may exist in highly urbanized and industrialized states of the North and Northeast they do not exist in Mississippi.

Mississippi has fifty seven (57) municipalities that have municipal separate school districts. Thirty three (33) of these municipalities have populations under 10,000 and twenty four (24) have populations above 10,000.

With respect to the thirty three (33) municipalities with populations under 10,000 only seven (7) reflected a loss in white population between 1970 and 1980. Of these seven (7) municipalities, one municipality, Hazlehurst, Mississippi, also reflected a loss in black population. Accordingly, only six (6) municipalities of the thirty three (33) municipalities that have populations under 10,000 reflected a loss in white population with no loss in black population. Significantly, the total combined loss in white population for these six (6) municipalities is 417 persons.

The above demographic findings are reflected by the following table which is based in 1970 and 1980 census figures.

(TABLE I)

MISSISSIPPI MUNICIPALITIES WITH POPULATIONS UNDER 10,000 WHICH HAVE SEPARATE MUNICIPAL SCHOOL DISTRICTS

	1970 Population		1980 Population	
Municipality	White	Black	White	Black
Aberdeen	3,621	2,533	4,028	3,142
Amory	5,509	1,726	5,632	1,660
Baldwyn	1,539	826	2,171	1,250
Bay St. Louis	5,323	1,416	6,370	1,433
Booneville	4,991	903	5,361	815
Clinton	6,584	658	13,506	1,059
Columbia	5,452	2,117	5,649	2,060
Drew	1,365	1,194	1,217	1,301
Durant	1,406	1,344	1,359	1,528
Forrest	2,655	1,423	2,975	2,241
Hazlehurst	1,956	2,617	1,863	2,568
Holly Springs	2,317	3,389	2,633	4,618

Houston	2,004	712	2,627	1,112
Indianola	3,903	5,000	4,047	4,148
Iuka	2,132	257	2,524	274
Kosciusko	4,599	2,644	4,591	2,798
Long Beach	5,866	246	7,383	414
Louisville	4,080	2,539	4,207	3,097
New Albany	4,877	1,543	5,463	1,586
Newton	2,250	1,299	2,148	1,552
Ocean Springs	8,773	783	13,254	1,009
Okolona	1,945	1,057	1,939	1,461
Pass Christian	2,110	862	3,199	1,720
Pearl	9,599	10	18,307	2,341
Petal	6,812	162	8,295	159
Philadelphia	4,335	1,907	4,447	1,832
Pontotoc	2,882	567	3,959	751
Richton	792	316	880	324
Ridgeland	1,538	109	4,854	565
Senatobia	3,060	1,182	3,523	1,467
Union	1,299	553	1,320	606
West Point	4,925	3,783	4,819	3,955
Winona	3,319	2,195	3,830	2,341

Furthermore, of the above thirty three (33) municipalities only five (5) municipalities have majority black populations according to the 1980 census figures i.e. Drew, Durant, Hazlehurst, Holly Springs, and Indianola, Mississippi.

With respect to the twenty four (24) municipalities that have separate municipal school districts and have populations over 10,000 only thirteen (13) reflected a loss in white population between 1970 and 1980 (not included in the summary are Biloxi and Gulfport which suffered a unique loss of population between 1970 and 1980 due to hurricane Camille and the reduction in military forces at Keesler Air Force Base following the end of the Vietnam War.)

Of these thirteen (13) municipalities losing white population between 1970 and 1980, three (3) Laurel, Greenwood and Oxford reflected a loss in both white and black population. Of the remaining ten (10) municipalities the total combined loss in white population is only 13,672.

The above demographic findings are reflected by the following table which is based on 1970 and 1980 census figures.

(TABLE II)

MISSISSIPPI MUNICIPALITIES WITH POPULATIONS OVER 10,000 WHICH HAVE SEPARATE MUNICIPAL SCHOOL DISTRICTS

	1970 Population		1980 Population	
Municipality	White	Black	White	Black
Brookhaven	6,650	4,037	6,421	4,358
Canton	4,550	5,946	3,823	7,269
Clarksdale	9,840	11,703	7,984	13,022
Cleveland	8,284	4,919	8,674	5,711
Columbus	16,021	9,721	15,070	12,126
Corinth	9,337	2,228	11,332	2,446
Greenville	18,835	20,619	16,181	24,137
Greenwood	11,118	11,130	9,510	10,460
Hattiesburg	27,133	11,024	26,295	13,995
Jackson	92,651	61,063	106,285	95,357
Laurel	15,201	8,914	13,191	8,661
McComb	7,971	3,990	7,807	4,469
Meridian	29,880	15,106	28,916	17,397
Moss Point	10,929	8,366	6,518	12,437
Natchez	9,733	9,959	10,514	11,447
Oxford	11,323	2,362	7,635	2,098
Pascagoula	23,663	3,564	24,005	4,920
Picayune	6,932	3,531	6,961	3,351
Starkville	8,479	2,798	11,019	3,823

Tupelo	16,874	3,579	19,447	4,327
Vicksburg	12,824	12,568	11,956	13,331
Yazoo City	4,312	6,469	6,325	6,049

Of the above twenty four (24) municipalities, only seven (7) have majority black populations according to the 1980 census figures i.e. Canton, Clarksdale, Greenwood, Moss Point, Natchez, Vicksburg and Greenville. Two (2) of these municipalities Natchez and Vicksburg have county-wide districts and accordingly are not relevant to the issue involved with the repeal of Section 37-7-611.

The Attorney General's March 31, 1989 objection to the repeal of Section 37-7-611 is based on the erroneous demographic finding that there is a trend in the state of blacks migrating to the cities and whites migrating out of the cities. As demonstrated above, there is no such trend in Mississippi. Accordingly, the Attorney General's objection should be withdrawn.

Furthermore, the Attorney General's March 31, 1989 objection to the repeal of Section 37-7-611 relies on statistics from the Mississippi State Department of Education which indicate that approximately half the municipal school districts in the state have a student population that is majority black and about two-thirds are 40 percent black or higher. Student enrollment population cannot properly serve as basis for measuring the effect of a voting change under Section 5 of the Voting Rights Act. Only total population or total voting age population can be relied upon to measure whether a voting change has a retrogressive effect. *Burns v. Richardson*, 384 U.S. 73 (1966); *Martin v. Venables*, 401 F.Supp. 611 (1975); *Klahr v. Williams*, 313 F.Supp. 148 (1970), aff'd sub nom., *Ely v. Klahr*, 403 U.S. 108 (1971); *Borneau v. Thornton*, 235 F.Supp. 175 (1964), 379 U.S. 15 (1964).

Perhaps the most critical point that can be made in connection with the absence of any adverse effect that repealing Section 37-7-611 will have on minority voters is

that even if the demographic trends cited in the Attorney General's March 31, 1989 letter were correct, the objection is still unwarranted.

To understand this point, assume that a majority black municipality or a municipality with a significant black voting age population annexes territory that is predominantly white. Here, the Attorney General's letter strains to articulate an adverse effect on minority voting. The purported adverse impact is that these newly annexed white voters will impact the selection of the governing authorities who in turn will appoint the school board members. In struggling to find and articulate an adverse impact on minority voting rights, the Attorney General has overlooked the fact that the above result will occur with or without Section 37-7-611. If a group of voters are annexed into a municipality, they will impact the selection of the governing authorities. The Attorney General cannot properly base his objection on a result that will occur with or without his objection. This, then is a non-issue. If the effect of the objection is interpreted as not affecting where students attend school and which district receives taxes, then its only effect would be that newly annexed voters could not participate in municipal elections if they reside within the boundaries of a county or consolidated school district. If a municipal annexation is precleared under Section 5, such preclearance would mean that the influx of such voters would not operate to diminish black voting strength within the municipality. Not to allow these voters to participate in municipal annexation because of a standing objection to the repeal of § 37-7-611 will have an effect that no one, including the Justice Department, could view as desirable. Another non-issue is the corresponding effect that these newly annexed voters will have on the selection of the school trustees in the adjoining county district or consolidated district. Again, assuming these rural or suburban districts are majority white, as the Attorney General's letter assumes, then allowing the newly annexed

white voters to vote for the trustees of county or consolidated school districts cannot minimize black voting strength. This is especially true in light of the new requirements of Chapters 444 and 523 (1988) which require single member districts for county and consolidated school districts. Furthermore, the repeal of Section 37-7-611 has the effect of preserving the status quo with respect to the racial composition of the adjacent countywide consolidated school districts and under *Beer v. United States*, 425 U.S. 130 (1976), preserving the status quo cannot violate Section 5.

Since municipal school board members are appointed, the only school election that these voters can participate in is school bond elections. Section 37-59-15, Miss. Code Ann. (Supp. 1989) governs the conduct of school bond elections. It provides in part as follows:

> **§ 39-59-15 Conduct of Election**
>
> Such election shall be held upon order of the school board, as for as is practicable, in the same manner as other elections are held in such county or municipality. *At such election, all qualified electors of such school district may vote.* (Emphasis added.)

The statute requires that only qualified electors of the school district can vote in such an election. It is this election that the Attorney General must use in measuring the effect of the repeal of Section 37-7-611 on minority voters. Viewing this type of election, in light of the factual situation relied upon by the Attorney General, and also assuming racial bloc voting, which the Attorney General always does, the only possible result that the repeal of Section 37-7-611 can have on minority voters in municipal separate school districts is an ameliorative one. The repeal of Section 37-7-611, under these assumed facts, can only enhance minority voting strength in municipal school bond elections. Under *Beer v. United States*, 425 U.S. 130 (1976),

if a change that affects voting "enhances the position of racial minorities with respect to their effective exercise of the electoral franchise, [it] can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5" 425 U.S. at 141.

If the repeal of Section 37-7-611 is precleared, the newly annexed white voters would not automatically participate in municipal school bond elections since they would not be included in the district unless they were brought in under Section 37-7-103, which would require Section 5 preclearance. If Section 37-7-611 is not precleared, then these newly annexed white voters could minimize the black voting strength in any school bond election. Either the Attorney General completely overlooked this fact, which we hope is the case, or he ignored his Section 5 responsibility to effectuate an educational goal that is unrelated to his responsibilities under Section 5.

APPLICATION OF SECTION 2 OF THE VOTING RIGHTS ACT TO SECTION 5 PRECLEARANCE SUBMISSIONS IS PROHIBITED

To the extent that the Attorney General's objection to the repeal of Section 37-7-611 is in any way predicated on Section 2 considerations, as hereinafter set forth, such an application of Section 2 considerations to a Section 5 submission is prohibited.

Under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, certain states and political subdivisions subject to the Act may not enforce "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting [hereinafter 'procedure'] different from that in force or effect on November 1, 1964," unless they have obtained a declaratory judgment from the United States District Court for the District of Columbia that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account

of face or color," or have submitted the proposed change to the United States Attorney General and the Attorney General has "precleared" the change, *i.e.*, has not objected to it within 60 days of the submission.

The purpose of Section 5's preclearance requirement was set forth by the Supreme Court in *Beer v. United States*, 425 U.S. 130, 140-141 (1976):

> The legislative history reveals that the basic purpose of Congress in enacting the Voting Rights Act was "to rid the country of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S., at 315. Section 5 was intended to play an important role in achieving that goal:
>
> > "Section 5 was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old one had been struck down. That practice had been possible because each new law remained in effect until the Justice Department or private plaintiffs were able to sustain the burden of proving that the new law, too, was discriminatory. . . . Congress therefore decided, as the Supreme Court held it could, 'to shift the advantage of time and inertia from the perpetrators of the evil to its victim,' by 'freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory.' " H.R. Rep. No. 94-196, pp. 57-58. (Footnotes omitted.)
>
> * * *
>
> By prohibiting the enforcement of a voting-procedure change until it has been demonstrated to the United States Department of Justice or to a three-judge federal court that the change

> does not have a discriminatory effect, Congress desired to prevent States from "undo[ing] or defeat[ing] the rights recently won" by Negroes. H.R. Rep. No. 91-397, p. 8. Section 5 was intended "to insure that [the gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques." S. Rep. No. 94-295, p. 19.

In sustaining the constitutionality of the preclearance requirement, the Supreme Court acknowledged that this suspension of new voting regulations pending federal scrutiny is "an uncommon exercise of congressional power," but observed that it was adopted solely to bar new retrogressive State enactments, and its constitutionality was sustained on this basis. *South Carolina v. Katzenbach*, 383 U.S. 301, 334-35 (1966).

In *Beer*, the lower court interpreted § 5 as barring preclearance of statutes which *dilute voting power*, and looked to " 'access to the political process * * * [as] the barometer of dilution of minority voting strength.' " 374 F. Supp. 363, 384 (D.D.C. 1974), *quoting Zimmer v. McKeithen*, 485 F.2d 1297, 1303 (5th Cir. 1973) (en banc), *aff'd on other grounds, East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636 (1976). In determing whether " 'the political processes leading to nomination and election were * * * equally open to participation by the group in question— [or whether] its members had less opportunity than did other residents of the district to participate in the political processes and to elect legislators of their choice,' " this Court relied upon cases interpreting § 2 as imposing the equivalent of the "results" test and looked to the factors traditionally applied and the evidence ordinarily adduced under that test. *Beer*, 374 F. Supp. at 384.

On appeal of the Beer case to the Supreme Court, the United States argued that the lower court "properly held

that dilution of voting strength on a racial basis is encompassed within the 'denying or abridging the right to vote' standard of Section 5 of the Voting Rights Act." [Brief for the United States (No. 73-1869), attached hereto as Appendix "K", p. 11.

The Supreme Court rejected this argument despite its express acknowledgment "that the basic purpose of Congress in enacting the Voting Rights Act was 'to rid the country of racial discrimination in voting.' " 425 U.S. at 104-41, *quoting Katzenbach*, 383 U.S. at 315. *Beer*, accordingly, forecloses any denial of preclearance based upon any standard other than retrogression and discriminatory purpose.

In its Reply Brief in *City of Lockhart v. United States*, 460 U.S. 125 (1983), the United States recognized the limits of Section 5, and stated:

> The 1982 amendments make no changes in the existing preclearance standards in Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. * * *
>
> * * *
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> Under appellee Cano's interpretation, Congress has expanded Section 5 to include an assessment of not only the "purpose" and "effect," but also the "results" of all proposed voting changes—and has done so without making any change in the language of Section 5. In these circumstances, we caution against according controlling significance to the references in the legislative history cited by appellee Cano. Cf. *Chrysler Corp. v. Brown*, 441 U.S. 281, 311 (1979); *SEC v. Sloan*, 436 U.S. 103, 121 (1978). The Court in *Beer v. United States, supra*, construed the "effects" standard in Section 5 to mean only "retrogression." The 1982 amendments to the Voting Rights

> Act suggest no congressional intent to overrule *Beer*. [Reply Brief for the United States, No. 81-802 (Appendix "L" hereto), pp. 2-4.]

By contrast, Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, as originally enacted and as subsequently amended, has an entirely different focus and provides entirely different remedies. As originally enacted, Section 2 tracked the language of the Fifteenth Amendment, prohibiting all states and political subdivisions from imposing or applying laws "to deny or abridge the right of any citizen of the United States to vote on account of race or color."[1] Under the leading lower court case of *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd on other grounds, East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636 (1976), plaintiffs could prevail in a Section 2 case either by proving discriminatory intent or discriminatory "results," *i.e.*, by showing that the electoral system resulted in a denial of equal access to the political process. However, in 1980, a plurality of the Supreme Court held that proof of discriminatory "results" alone was insufficient to establish a violation of the Fifteenth Amendment and Section 2. The Court required proof that a contested electoral mechanism was intentionally adopted for a discriminatory purpose in order to establish such a violation. *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

In reaction to *City of Mobile*, Congress in 1982 amended Section 2 to prohibit any state practice "which results in a denial or abridgement of the right * * * to vote on ac-

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[1] Section 2 provided:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

Pub. L. No. 89-110, § 2, 79 Stat. 437 (1965).

count of race * * *. A violation of [Section 2] is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [racial minority] * * * in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 96 Stat. at 134, codified at 42 U.S.C. § 1973 (1986). The legislative history of the amendment to Section 2 explains that the new language was intended "to make clear that proof of discriminatory intent is not required to establish a violation of Section 2." S. Rep. No. 417, 97th Cong., 2d. Sess. 2.

The Supreme Court has frequently observed that "the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Produce Safety Com'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1982). Section 5 states what the standard in a preclearance proceeding will be, and that standard differs materially from the standard under Section 2 as amended in 1982.

Section 5 provides, in pertinent part, that a covered state or political subdivision may institute an action in this Court "for a declaratory judgment that [a new voting] qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color * * *." By contrast, Section 2, as amended in 1982, provides in pertinent part that a violation

> is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its

> members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 42 U.S.C. § 1973.[2]

Section 2 was in 1982, and is now, understood to establish a "results" test, as opposed to the retrogressive "purpose and effect" test of Section 5.

In the Voting Rights Amendments of 1982, Congress reenacted Section 5 without altering it by so much as a single word. This circumstance is clear evidence against any contention that Congress intended to change the standard of Section 5. The situation parallels that in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982). Against the background of Supreme Court decisions construing the statute, "the fact that a comprehensive reexamination and significant amendment of the

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[2] The amended Section 2 reads in full:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of face or color, or in contravention of the guarantees set forth in section 4(f)(2) as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

[Voting Rights Act] left intact the statutory provisions under which [preclearance was to be granted if the State could establish that there had been no retrogressive purpose or effect] is itself evidence that Congress affirmatively intended to preserve that [standard]." *Cf. id.* at 381-82. As the Court noted:

> "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change, see *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414, n.8 (1975); *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 366 (1951); *National Lead Co. v. United States*, 252 U.S. 140, 147 (1920); 2A C. Sands, Sutherland on Statutory Construction § 49.09 and cases cited (4th ed. 1973)."

Merrill Lynch, 456 U.S. at 382 n.66, *quoting Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978).

This principle was followed with respect to Section 5 itself in *Georgia v. United States*, 411 U.S. 526 (1973). The question there was whether Section 5 applies to election law changes which were undertaken as part of a State reapportionment of its legislative districts. The Court had held that it does so in *Allen v. State Board of Elections*, 393 U.S. 544 (1969). Referring to the *Allen* decision, the Court said in *Georgia*:

> Had Congress disagreed with the interpretation of § 5 in *Allen*, it had ample opportunity to amend the statute. After extensive deliberations in 1970 on bills to extend the Voting Rights Act, during which the *Allen* case was repeatedly discussed, the Act was extended for five years, without any substantive modification of § 5. Pub. L. 91-285, 84 Stat. 314, 315. We can only conclude, then, that *Allen* correctly interpreted the congressional design * * *.

411 U.S. at 533 (footnote omitted).

Of course, the applicability of this rule of construction is valid only on the premise that Congress was fully aware of the construction in question. In this instance, there can be no doubt concerning Congress' awareness of the Supreme Court decisions construing Section 5, for the relevant hearings and committee reports demonstrate a full examination of the Supreme Court's Voting Rights Act decisions. Indeed, the absence of any amendment to Section 5 is especially compelling evidence that no change was intended therein in light of the fact that one of the major changes in law wrought by the 1982 Amendments was the revision of Section 2 to reflect Congressional disapproval of the Supreme Court's construction of Section 2 in *City of Mobile*.[3]

Accordingly, Mississippi contends that the United States Attorney General may not use Section 2 standards in Section 5 proceedings.

CONCLUSION

For the above and foregoing reasons, the Attorney General of the State of Mississippi respectfully requests that

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[3] The same conclusion is compelled by another principle of statutory construction, which recently was reaffirmed by the Supreme Court. It is that "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council*, 108 S. Ct. 1392 (1988). *See also NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 499-501 (1979). The incorporation of the Section 2 "results" test into Section 5 raises serious constitutional problems. Under its present construction, Section 5 operates as an unparalleled but nonetheless limited restraint on voting changes in covered jurisdictions. The special treatment of covered jurisdictions under Section 5 is justified because of the specific and unique evil to which this remedy is directed. It was designed to prevent jurisdictions which discriminated from diminishing the position of racial minorities, not to coerce covered jurisdictions into changing their laws.

the Attorney General of the United States reconsider his objection to the repeal of Section 37-7-611, Mississippi Code of 1972, and that Section 47 of Chapter 492, 1986 Laws of 1986 be given preclearance in accordance with 42 U.S.C. § 1973c.

This the 12th day of January, 1990.

Respectfully submitted,

Mike Moore, Attorney General
State of Mississippi

Stephen J. Kirchmayr
Deputy Attorney General

By: /s/ Giles W. Bryant
Giles W. Bryant
Deputy Attorney General

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APPENDIX N

[SEAL]

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 25 1990

Honorable Mike Moore
Attorney General
State of Mississippi
P.O. Box 220
Jackson, Mississippi 39205-0220

Dear Mr. Attorney General:

This refers to your January 16, 1990, request for reconsideration of the March 31, 1989, objection interposed pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Section 47 of the Uniform School Law of 1986, Chapter 492, insofar as it repeals Section 37-7-611 of the Mississippi Code. As you are aware, Section 611 deals with the modification of municipal school district boundaries in Mississippi when the district's parent city annexes territory outside the school district, and generally provides that any such annexation will prompt a similar annexation by the municipal school district. Your request was supplemented on February 27, March 2, and March 13, 1990.

This also refers to your related submission under Section 5 of the Voting Rights Act of Chapter 379, H.B. No. 1159 (1977), which partially repealed the provisions of Section 611 by providing that they do not apply when a municipal school district's parent city adopts an annexation that

crosses county lines. We received your submission on March 26, 1990.

We have carefully considered the information you have provided, data from the 1970 and 1980 Censuses, and information and comments received from other interested parties. For the following reasons, it appears that the concerns set forth in the March 31, 1989, objection letter continue to weigh heavily in our review of the repeal of Section 611, and it also appears that these concerns apply with equal force to the 1977 partial repeal of the boundary extension provisions of Section 611.

At the outset, we note that the state makes several claims about the preclearance status of the instant changes which appear to seriously misconstrue the structure, purpose, and history of the preclearance requirement. The state contends that the repeal of Section 611 is not properly before the Attorney General for review because the repeal allegedly was precleared by operation of law when the state in 1986 submitted other portions of the Uniform School Law and no objection then was interposed to that submission within the 60-day review period. The state also contends that a 1978 amendment which clarified the scope of the instant 1977 change was precleared when the state in 1981 received preclearance for a separate portion of the 1978 statute.

It is well-established that to trigger Section 5 review a covered jurisdiction must submit a voting change to the Attorney General in an "unambiguous and recordable manner." *Allen* v. *State Board of Elections*, 393 U.S. 544, 571 (1969). *Accord, McCain* v. *Lybrand*, 465 U.S. 236 (1984); Procedures for the Administration of Section 5 (28 C.F.R. 51.26(d), 51.27). Both the prior submission of the Uniform School Law and the prior submission of the 1978 act identified specific voting changes adopted by those statutes, but neither submission contained any reference to the voting changes which the state now claims were precleared.

Section 5, as interpreted by the courts and our submission guidelines, plainly fixes the responsibility for identifying voting changes on the state, not the United States Attorney General, yet the state appears to be arguing in both instances that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made. Accordingly, neither claim has any merit.

The principal factual argument advanced here by the state is that the changes in the procedure for extending municipal school district boundaries do not have any racial aspect but rather simply reflect an ongoing contest among school districts for students and tax base. In that regard, the state asks that we compare the 1970 and 1980 Census data for cities with municipal school districts to understand the current demographic trends in the state, and also points to some school district financial data from the 1984-1985 school year. In addition, the state claims that the question whether a municipal school district's boundaries should be extended is not relevant to whether the parent city should be allowed to adopt its proposed annexation, and thus the state's uncoupling of the two issues reflects a rational, nonracial decision.

However, our review of the census data and of specific recent annexation disputes in the state confirms our prior judgment that the repeal of Section 611 will essentially freeze municipal school districts in their present boundaries which, in many instances, apparently will yield municipal districts with increasingly higher black population percentages and neighboring school districts that are increasingly white. Among the school districts that would appear to be so affected is the Hattiesburg school district, where the issue of whether suburban whites will be annexed into the more heavily black municipal school district appears to have been the linchpin for the adoption of the 1977 change. Overall, while we continue to recognize that demographic patterns are not uniform throughout the state

and that some school district annexation disputes may only reflect the concerns noted by the state, there appear to be significant racial considerations involved in the instant changes which are generally understood among state political leaders and educators.

It also continues to appear that by repealing the boundary extension provisions of Section 611, the state would abandon the judicial, case-by-case approach to reviewing municipal annexations as they relate to school district boundaries, a process which the state supreme court recently confirmed fully allows for the consideration of any school district dispute involving legitimate educational concerns. *Harrison County* v. *City of Gulfport*, 557 So.2d 780 (Miss. S.Ct. 1990). We have received no nonracial explanation for reversing this longstanding practice.

Lastly, the state avers that the changes at issue relate to the administration of schools and do not deny or abridge the right to vote. Our analysis, however, indicates that the submitted changes involve the revision of political boundary lines based on race which, as indicated in our objection letter, is not permitted under Section 5. *Perkins* v. *Matthews*, 400 U.S. 379 (1971). Furthermore, as explained in that letter, the changes appear to establish a system for choosing municipal school district trustees that impacts negatively on the influence of minority city school district residents.

Under Section 5 of the Voting Rights Act, the submitting jurisdiction has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See *Georgia* v. *United States*, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in these instances. Accordingly, on behalf of the Attorney General, I must decline to withdraw

the objection to the repeal of Section 37-7-611 and must object to the change occasioned by Chapter 379 (1977).

As we advised in the March 31, 1989, objection letter, you have the right under Section 5 to seek a declaratory judgment from the United States District Court for the District of Columbia that the submitted changes have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. However, until these objections are withdrawn or a judgment from the District of Columbia Court is obtained, the repeal of Section 37-7-611 and the change occasioned by Chapter 379 (1977) continue to be legally unenforceable. Similarly, the unprecleared 1978 amendment to the 1977 change (adopted in Chapter 312 (1978)) is legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Mississippi plans to take with respect to these matters. If you have any questions, please feel free to call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

/s/ John R. Dunne

John R. Dunne
Assistant Attorney General
Civil Rights Division

APPENDIX O

42 U.S.C. § 1973c

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or

procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

APPENDIX P

28 C.F.R. § 51.25 (1986)

§ 51.25 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.

(b) If the change affecting voting is not readily apparent on the face of the document provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(c) The name, title, address, and telephone number of the person making the submission.

(d) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(e) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(f) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(g) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(h) The date of adoption of the change affecting voting.

(i) The date on which the change is to take effect.

(j) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(k) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(l) A statement of the reasons for the change.

(m) A statement of the anticipated effect of the change on members of racial or language minority groups.

(n) A statement identifying any past or pending litigation concerning the change or related voting practices.

(o) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(p) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.26 and is most likely to be needed with respect to redistricting, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.35.

APPENDIX Q

28 C.F.R. § 51.35 (1986)

§ 51.35 Obtaining information from the submitting authority.

(a) If a submission does not satisfy the requirements of § 51.25, the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission and no later than the 60th day following its receipt.

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority, and the 60-day period will commence upon the date of such notification.

(d) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.30.